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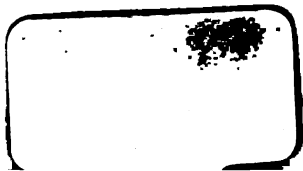
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Gough
Addl.
London.
p. 35.



THE
METHOD AND RULE OF PROCEEDING
UPON ALL
ELECTIONS, POLLS AND SCRUTINIES,
AT
COMMON HALLS AND WARDMOTES,
WITHIN THE
City of London.
BY SIR WILLIAM MILDMAY, BART.

WITH
ADDITIONAL NOTES ON WARDMOTE ELECTIONS;
AN
HISTORICAL REVIEW
OF THE
CITY ELECTORAL FRANCHISES;
AND OF THE
Incorporated Mysteries
WITH THEIR
LIVERYMEN, ELECTORS OF LONDON.

BY
HENRY KENT S. CAUSTON,
CITIZEN AND SKINNER OF LONDON.



HENRY KENT CAUSTON AND CO., BIRCHIN LANE.

MDCCCXLI.

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BIRCHIN LANE, CORNHILL.**

TO HIS CONFRÈRES,
LIVERYMEN OF THE CHARTERED MYSTERIES,
THIS SLIGHT SKETCH,

FOR A
CONSTITUTIONAL HISTORY
OF THE
CITY OF LONDON,

(PREFIXED, BY WAY OF INTRODUCTION, TO THE TREATISE OF
SIR WILLIAM MILDMAI ON CITY ELECTIONS),

IS WITH GREAT RESPECT INSCRIBED,

BY THEIR

FAITHFUL AND OBEDIENT SERVANT,

THE EDITOR.

THE EDITOR TO HIS READERS.



WHEN John Gilpin started for Edmonton, his intention was to have stopped at the Bell,—neither his purpose nor will carrying him further. In the latter particular, however, the parallel ceases to exist; for the Editor honestly confesses his earnest desire for a much longer journey. It is necessary, however, to account for some instances of irregularity of arrangement, and repetition of facts, where a more digested condensation would preferably have been adopted—that his original purpose was merely the republication of Sir **WILLIAM MILD MAY**'s scarce Treatise on City Elections, with some remarks on the discrepancies of opinion and practice still existing, in administering the franchise within the Wards.

Reference to the general and particular

Histories of London, and the sundry pamphlets that have occasionally been issued in the advocacy of party questions, however, at once shewed that something more was necessary to be done. In the former, facts were found amassed without any application or deduction—and in the latter they were misunderstood or misrepresented, to answer the object in view.

Two circumstances of miscomprehension seemed also, generally, to have scared the propriety of the Moderns, and to have formed the vapour on which several had based their refulgent theorems. These were, firstly—that, at the time of their reforming advocacy, the elective rights of the Citizens had degenerated, from an original extreme of freedom, to the most Judaical slavery—even to the purchase of a badge !* And, secondly, that the Liverymen of the Incorporated Crafts had been the monopolizing usurpers of a direct franchise, theretofore common to the freemen (or even to the inhabitants) at large ! †

* The persons who exercise the elective franchise in the city of London, do it, not as citizens, but as *badgemen* or liverymen (*Evidence and Arguments on the Elective Franchise*, p. 34, 1830). The *only* title the Companies have to the elective rights, under the Act of 11th Geo. I, is by *purchasing a certain dress*.—*Ib.*, p. 26.

† Sir William Mildmay, even, seems to have taken it for

To discover the truth or fallacy of these assumptions, which no one had hitherto attempted, and to trace an orderly gradation of facts, with the circumstances that progressively induced them, have been the purpose of the *extra-limites*, which, multiplying in a threefold degree the originally proposed republication of Sir William Mildmay's celebrated Treatise, have left it the nucleus only of the present volume.

Nevertheless, much interesting matter has, and in a space so limited must necessarily have been passed over; so that although, in traversing from the frank-tenure of the Wards to the general civic franchise, the Editor confesses so far to have *outrun the constable*, yet the volume, as it professes to be, is but the slight sketch of a Work in a department of civic history, which, never having been carefully, or indeed, it may be said, at all investigated, the subject had, consequently, rather been made the offensive weapon of party question, than treated with the distinctness and im-

granted, that, until the 7th Richard II, the "elections and other business of the City had been carried on by the general assembly of the freemen;"—and that "when the metropolis grew so populated, and it became inconvenient and almost impracticable" so to assemble—a select council was then first nominated for such purposes, at their own petition and assent.—*Vide p. 5.*

partiality due to the truths of history. Nor herein have the Livery Companies hitherto had any advocate, for notwithstanding the "Standard Work" devoted expressly to their history,* a circumstance of their discriminated citizenship which so mainly tended to the preservation and increase of their importance, when their original trading incorporation had become obsolete, does not seem to have come within the extended range that the author had conceived necessary to his subject. And strange to say that Mr. Norton, in his "Commentaries,"† although he has devoted upwards of three hundred pages of the volume to an "historical account of the rise and progress of the city of London," is singularly deficient on the subject herein treated. Of Mr.

* History of the Twelve Great Livery Companies of London, principally compiled from their Grants and Records, with an Historical Essay, and Accounts of each Company, its origin, constitution, government, dress, customs, halls, and Trust Estates and Charities; including Notices and Illustrations of Metropolitan Trade and Commerce, as originally concentrated in those Societies; and the language, manners and expences of ancient times, with attested Copies and translations of the Companies' Charters. By William Herbert, Librarian to the Corporation of London. 2 vols. 8vo. 1837.

† Commentaries on the History, Constitution, and Chartered Franchises of the city of London. By Geo. Norton, esq., Barrister-at-Law. 8vo. 1829.

Payne's "Treatise on Municipal Rights" * little could be expected, when his magnitude of subject is found compressed into one hundred and forty-four pages—leaving small scope for particular, much less detailed, history; his chapter "on the Rights of the Livery," in twenty-eight pages, consequently contains little to bear out its subdivisional title, by any argument either in affirmation or negation of the fact. The essay of Mr. Schultes is the only one that approaches the subject in a tangible, though "questionable shape." Primitively commencing his enquiry, with "a retrospection of mankind in a state of natural society," and reviewing the civil economy of the Saxons, even from the arrival of St. Austin, he prefaces the object of his essay to have been,

* A Treatise on Municipal Rights, commencing with a summary account of the Origin and Progress of Society and Government, and comprising a concise view of the state thereof, from the earliest period of British History to the institution of Corporations in general, and that of London in particular; with an account of the ancient modes of electing the Mayors and Sheriffs of London, and the Representatives in Parliament, and various other matters relating to the Common Council and the Livery, connected with the public rights of the Citizens of London, and applicable to the present state of the times. By William Payne, Citizen and Liveryman of London. 8vo. 1813.

“ to investigate the origin of the elective franchise of the citizens of London, to explain the authority by which they held general assemblies for civic purposes, and to endeavour to shew, by custom, records, and analogy of circumstances, *that the elective power exercised by the Liverymen, has arisen from an usurpation of the general rights of the Citizens at large.*”* In pursuit of a theoretical liberty that never existed, the learned advocate (the very counterbalance of Dr. Brady, who has been stigmatized “the learned advocate of slavery”)—notwithstanding the truth of some of his general principles, and the talent with which he advocated the whole of them, adopted undoubtingly all the errors of his predecessors, as to the “usurpation by the Crafts,” and the “disfranchisement of the Wards,” in aid of his favourite theory. And from this source, a few years later, Mr. Newell† freely

* An Inquiry into the Elective Franchise of the Citizens of London, and the General Rights of the Livery. By Henry Schultes, Gent. 8vo. 1822.

† Evidence and Arguments before the Committee for General Purposes, in support of the Elective Franchise of the Resident Freemen of London; shewing that the exclusive exercise of that right by the Liverymen is contrary to ancient custom, and the Principles of our Constitution. By J. Newell. 8vo. 1830.

transferred the same fallacies, with improvements peculiarly his own.

Thus, much of the present indication has necessarily been expended in clearing away incrustations,* which seem rather to have

* Since the city of London has her own Grammar School, it is hoped the danger of recurrence is past ; but alas ! poor old London, among other instances of degeneracy attributed to her institutions, she is represented to have been a sad martyr to her Latin ! It is not many years since Dr. Hughson contended she had been defrauded of her valuable right of Gaugership, by the unlearned translation of a preposition ! Dr. Burn, whom he quotes, reports the circumstance, no doubt, correctly enough—that “ a third encroachment on the rights of the citizens of London had occurred very recently, in a cause, *the City of London against the Dock Company* ; wherein a verdict had been given against the plaintiff, *because it was not ascertained what constituted the Port of London.*” Here is a case, and a verdict upon a deficiency of evidence as to a boundary ; but Dr. Hughson, referring to the fourth charter of Edw. IV, says—“ in the original, the office of gauging is granted *INFRA Civitatem*, which (contrary to the acknowledged and most ancient sense of the word, from the time of Cicero, &c.) has been translated *within* ! when, to make it *within*, the word should be *intra*, in opposition to *extra*, *without* ; so, also, *infra*, *below*, in contradistinction to *supra*, *above*. When monkish ignorance pervaded this country, that ignorance might have suffered the mistranslation of *infra*, *within* ; but surely, when the nation began to be enlightened, in this and the following reigns, the classics reassumed their proper authority, and no doubt that *infra* retook its proper meaning, as will be discovered in the charters respecting gaug-

tended to the opacity of their subject, than to the desirable end of research into the conduct of the past.

ing by Henry VII and Charles I—the latter the son of the scholar of the famous Buchanan, who would not suffer such a gross error to have escaped. Yet, strange to tell, in the most learned age that Great Britain has known—at the commencement of the nineteenth century, when critical learning has attained the greatest superiority, the city of London has lost two causes at law, because, forsooth, its opponents have, *as obstinately as ignorantly*, translated the word *infra, within!* and the law was so blind as not to see it!!!”—*Priv. of Lond.*, p. 38.

Taking it as an axiom agreed, that the son of the scholar of the famous Buchanan would have had none but classical law scribes, and that he would have confirmed no charters but in classical terms,—in reciting the charter of Charles I, the Doctor further propounds, that it “granted to the said Mayor, &c., the office of gauging wines, &c. *below the City* [i. e. in the port of the City; *for the Latin, as before mentioned, is INFRA Civitatem*], at any time arriving or coming to the said city”—*Priv. of Lond.*, p. 64.

To be critical, it might be asked whether, at the time of the grant, wines “arriving and coming to the said city” were customarily landed *before they arrived?* And whether the “Port of the City” (the Doctor’s exposition of the words “*infra civitatem*”) could have had any other reference than to the limit of the walls, comprising those customary ports of landing, where the gauging had customarily been performed, the bulk broken, and the *recta prisæ* ascertained and due to the King? These questions negatived, London’s misfortune appears to have been, that neither Cicero, nor the son of Buchanan’s scholar, lived in the reign of Edward the Fourth, when monkish

In discovering the fallacies of others, it would be vain to offer a blameless effort—nor does the Editor hope even to pass scot-free

Latin was rife; and that the law scribes of the time of Charles I were as unclassical as their predecessors.

"In many instances," says Mr. Jacob, in the preface to his *Law Dictionary*, "the law Latin differing from other Latin, I have purposely used and followed it, as those have done who have gone before me." The learned Doctor, in like manner, should have accommodated his translation to the date of the original; and his error lay in gauging the low Latin record by the classic standard. If, for a moment, he had laid aside scholastic criticism for common sense (beside that, throughout the city charters, the words "*infra* Civitatem" are those invariably employed; and that, in law Latin, *infra* seems generally to have superseded the classic word, as more comprehensive, perhaps, of the *substance* and boundary of a grant in fee), he must have concluded that the immunity granted would have had some reference to a known limit, and to the state of things as they existed at the time, when the port or ports of the City, where gaugeable goods were alone allowed to be landed, were within the walls, and principally at *Queenhithe* and *Billensgate*. In thorough good will to the City, however, the Doctor argued that the city privilege, by the terms of the charter, was not, like other of her local rights, so circumscribed, but extended "*below*" the said boundary—wherever it might be; and that the right of the City Ganger within the premises of the Dock Company was lost, because it was "obstinately as ignorantly" allowed, "that the Latin word *infra* meant *within*, instead of *below*, its acknowledged meaning for upwards of a thousand years."—*Ib.*, p. 124.

Any third-class boy at the City of London School (if the citizens had then happily possessed that seat of

of the common lot: and as it would have been inconsistent with the nature of the inquiry, to spare the palpable blunders of the authors he has quoted, so it would be equally incompatible to ask quarter for his own.

London, November, 1841.

learning) could have given evidence of the same truth, that *infra* did mean *below*—aye, UNDERNEATH—down to the very antipodes of his mother land; but that it could have been taken to infer *below*, in the character of *extra*, *ultra*, or an extension of surface, according to the exposition of the learned Doctor of Laws, must remain a logogriph, until Cicero or Buchanan shall have the politeness to unravel it.

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THE
EDITOR'S INTRODUCTION.

LITTLE apology would of itself be necessary for laying before the citizens of London a new edition of Sir William Mildmay's Treatise on City Elections*—a Work which, al-

* Sir William Mildmay, Bart., of Moulsham Hall, Co. Essex, was the son of William Mildmay, Esq. Chief of the E. I. Company's factory at Surat, by Sarah, his wife, daughter of Judge Wilcox, of the same Settlement; and a collateral branch of the stock of which the celebrated Sir Walter Mildmay, Chancellor of the Exchequer to Queen Elizabeth, was so graceful an ornament. The subject of the present Memoir was of Emanuel College, Cambridge, the foundation of his ancestor Sir Walter, where he took the degree of Master of Arts; and entered himself of the Middle Temple, of which honorable Society he became a Bencher. Applying his studies chiefly to the laws of trade, he went several times abroad to pursue the same subject internationally, and composed a treatise, entitled "*The laws and policy of England, relating to trade, examined by the maxims and principles of trade in general, and by the laws and policy of other trading nations.*" In 1743, he published the first edition of his Work on City Elections, which underwent two other editions in his lifetime; and has ever since been appealed to as the stand-

b.

though it has gone through several reprints, and three Editions in the life time of the Author, has yet become so scarce that a copy is not to be found for sale throughout the Metropolis. But it will be necessary further, to state some circumstances which immediately

ard and guide for the determination of all disputes respecting the election of city officers.

At the peace of Aix la Chapelle in 1748, Mr. Mildmay went to France, and made himself acquainted with the question of the dispute which shortly afterwards arose between the two crowns, upon the boundaries of their territory in America; so that upon his return, at the latter end of the year 1749, his Majesty Geo. II, was pleased to nominate him jointly with William Shirley, Esq., then late Governor of New England, his Majesty's Commissioners to settle all disputes with the Commissioners of France, concerning the ancient limits of *Nova Scotia* or *Acadie*; the right to the Islands of *St. Lucia*, *Tobago*, *St. Vincent*, and *Dominica*; as also the accounts of the prizes taken at sea, after signing the preliminaries of peace at Aix la Chapelle. Mr. Mildmay was also charged with another Commission singly, for adjusting the demands of the two Crowns, on account of the ransom, subsistence and hospital charges of the prisoners taken in the preceding war.

Having received his instructions upon these points, he went to Paris in May, 1750, and there remained as his Majesty's Commissioner for the space of five years, until nearly the time of the declaration of War in 1756, negotiating several Commissions during that time in such a manner as to receive the approbation and thanks of his Majesty's Government. The memorials which were delivered on the result of the several conferences concerning the limits of *Nova Scotia*, and the rights of *St. Lucia*,

induced to the present publication. These originated in a contested election for representatives in Common-Council for the Ward of Langbourne, on St. Thomas's Day, 1837.

At that period opposing opinions in reference to the policy of Her Majesty's govern-

clearly indicated his Majesty's lawful claim. These being answered by "*A Summary Discussion of the limits of ancient Acadie,*" drawn up by one of the French Commissioners, Mr. Mildmay immediately answered it in a concise pamphlet, of which a very large impression was speedily sold—so well was it approved by the public. This was entitled "*A fair representation of his Majesty's right to Nova Scotia and Acadie, chiefly stated from the Memorials of the English and French Commissioners.*"

Upon the question resolving itself into a declaration of War, in April, 1756, Mr. Mildmay retired to his Seat, Moulsham Hall, in Essex, which had come to him by the devise of his kinsman, Earl Fitzwalter, who died without issue; and still to render his Majesty service in the cause in which his legal talent had not availed, he accepted of a Captain's commission in the Militia, then newly raised throughout the kingdom, and until the peace in 1763, served with his regiment; being on duty for the most part of the latter four years, in guarding the French prisoners at Winchester.

The peace, which again threw Mr. Mildmay upon his own resources for employment, directed his attention to the police of the Metropolis, which appears to have been in a very disordered state, and as then expressed "a disgrace to the Magistracy": so inefficient indeed were the arrangements for the protection of life and property, that His Majesty had more than once made it a subject of his especial recommendation in his addresses to the Parlia-

ment ran exceedingly high, and the Wardmote elections of that year were not free from the excitation which political contests always create.

In this instance the contest resolved itself into a trial of strength between two gentlemen—one of whom (on whose behalf extraordin-

ment, that these growing evils called for the most serious attention. Here Mr. Mildmay's knowledge again became available; his residence in France had supplied him with considerable information upon the subject; and in 1763, he published "*A treatise on the Police of France*": and some time after, followed a more general result of his observations abroad, in "*An Account of the Southern Maritime Provinces of France, with a Supplement containing Observations on the three principal Cities of Provence, viz: Aix, Marseilles and Toulon. To which are added some remarks on the Marine of France.*" These were the substance of several representations which he drew up for the perusal of his Majesty's Ministers, to whom they had been offered soon after the declaration of War in 1756; and after the peace, were published by him, "in the hope that the observations they contained might, on some future occasion, be instrumental to the service of his Country."

In consideration of his public services, his Majesty was pleased to confer upon Mr. Mildmay, and the heirs male of his body, the title and honor of a Baronet, by letters patent bearing date the 12th February, 1765. In the same year, Sir William Mildmay served Sheriff for the County of Essex. He married his relative, Ann, daughter of Humphrey Mildmay, of Shawford, Esq, the representative of another branch of a once numerous family; and closed his active and useful life, at Bath, in 1772. Dying without issue, his title became extinct.

ary interest had been exercised) at the termination of the Poll being left in a minority of six votes, had the bad taste to demand a Scrutiny, which (after being carried on to the full extent allowed by law) ultimately crowned him with "the high honor to which he had aspired" by an unenviable majority of *two*—with the disallowance of several votes which it was contended, and has since been admitted, were erroneously rejected.

During this scrutiny, the Editor had the honor of addressing a few words to the Court of Wardmote, in support of such votes; objected to, as appeared to him, upon grounds not warranted by the obvious and fair construction of the Statute under which the right of voting in respect of these elections had been settled and defined. And a subsequent acquaintance with the work of Sir William Mildmay, confirmed that his position had in fact been the original construction of the parliamentary measure, as well as a restoration of the ancient rule and prescriptive practice.

It did appear, and the remark still holds good, that although the 11th Geo. I. had been expressly passed, as the preamble recites, for the purpose of "regulating elections" in the City of London, and "settling the right of such elections;" yet in the words of Sir

William Mildmay, is that right noways settled, or at least not generally agreed upon; and he accounts in some measure for the discrepancy by observing "*that every presiding officer claims a liberty of putting his construction upon each separate question*, either as he is inclined to adhere to the strict letter of the law, or follow the more liberal principles of equity."

This observation, made by one so well calculated to know the truth, eighteen years after the Act of Parliament had become law, goes very far to shew how futile for its object of quieting the existing dissensions, had been the measure, whilst any of that generation of "unlawful intruders" survived; and how divided were the Aldermen, as the presiding and returning officers at the Wardmotes, even at that distant date, upon the operation of the law. But the differences which then existed and occasioned distrust, were similar to those which had induced the measure of legislation, upon which no disagreement at the present day exists; and were distinct from the objection that raised the present enquiry. It is no longer alleged that non-freemen may vote for representatives in the City Councils; nor, until the Act of William IV. in giving a new constitution to Parliament, subverted

the ancient constitution of the City, and established the right, had it ever been urged or ruled *that non-freemen had a voice in the election of its parliamentary representatives!*

Not however to anticipate a subject of future remark; although no imputation of unfairness is now to be imagined, nor in the particular case, can any but the most strict impartiality of intention be entertained; yet it is nevertheless notorious that, after a century and a quarter from its enactment, as little unanimity as ever exists as to the construction of the Act in question, as at the period, when Sir William Mildmay traced that diversity to its cause. In one Ward votes are rejected which are admitted in another,—the variation depending, not upon the inclination or disinclination of the returning officer to adhere or depart from the “letter of the law,” but from the absence of unanimity of opinion in the distinct legal advice, under which each of the twenty five returning officers delivers his individual judgment,—variable as the mind of man, without taking into view the very unprofessional nature of a quality that would, in a community of citizens and frankbrethren, be so desirable.

Thus advised, it had been the custom at the annual Mote of the Ward of Langbourne,

to "lay down the law" as to the qualification of a voter as follows: viz. That he must be a householder, and in Scot and Lot, and also an *inhabitant*;—at any rate that he should *either by himself or his clerk, sleep one night in the year within the Ward.*

This construction, so evasive of the law, if actual residence had been enjoined; colourable merely, and so deficient of good faith as a residentiary qualification, had excited some surprise, and induced a careful examination of the statute in question, and the circumstances under which it had been passed, so that by a comparison of the alleged existing evils and the operation of the remedial measure, the obvious intent of the legislature was obtained, in a reversion to the ancient custom of the city; and that fair, plain and reasonable intention which had been warped, misconstrued and ultimately subverted, appeared once again restored to its original and simple import.

The challenge of votes as before stated, upon the ground of non-residence, gave occasion for the argument of the question; and it was urged in defence of them, that if residence had been required by the Act, it must be *actual* and not *colourable merely*: but that in fact, *a freeman occupant householder, in Scot and*

*Lot, was an inhabitant within the meaning of the Statute of Geo. I, and entitled to vote in respect of such occupancy and its consequential liabilities.** The votes were disallowed; and in explanation of his decision, the Alderman observed, that if he had been called upon for the first time to administer the Act of Parliament, he probably might have arrived at a different conclusion; but as that was not the case, he had only followed the precedent of former occasions; and that having been guided in his judgment by the opinion of a very high legal authority, he had only decided in the like manner as it might be supposed any appeal to a superior Court would have been determined.†

* For further arguments upon this question, see pp. 55, 63, 86, 92, 94, 103, 105, &c. and the appendant notes at each reference.

† It is almost unnecessary in addressing the Citizens of London, and it would be wholly superfluous in the district of his jurisdiction, where a general urbanity has throughout marked his public career, to acknowledge the courtesy of the Alderman of the Ward of Langbourne, upon the particular occasion in question—as unexceptionable as the impartial intention of his judgment,—but that the Editor feels called upon particularly to the acknowledgment; and to state that, in deciding against him, he was obliged by a perusal of the legal opinion upon which that decision had been based. Still as the law recognizes no such advice, nor personal irresponsibility in the returning officer, there is no separating an honesty of purpose from

It is very true that the decision had been induced by an opinion of Mr. Common Serjeant Denman, and that that learned gentleman as lord Denman, had succeeded to the chief-justiceship of the Court of Queen's Bench ; still the principle involved two or three anomalous positions which it will be difficult to retoncile by any rule of reason.

It may be observed that if legal men were always correct in their opinion, no one would lose his suit ; and if the learned judges were at all times correct in their decisions, no judgment would be reversed upon appeal. The principle of this judgment would say "Because I have always decided in error, I see no reason why I should now decide correctly;" and secondly, "Inasmuch as if I were to correct a palpable error, of what avail would it be, when my judgment might be controverted by an appeal to the superior Court, whose opinion I possess ? Therefore in doing wrong in the first instance, I merely anticipate a wrong that might ultimately be done."

a responsibility for any erroneous advice that may be adopted. If any fact could bear further testimony of a highly distinguished integrity of purpose, it is in the subsequent acknowledgment of the Alderman,—That having given the matter his more immediate attention, if again called upon to adjudicate the same question, he should decide it differently.

By the effect of this judgment, a freeman occupant householder, may be called upon in purse and person, to pay and perform all the liabilities of Scot and Lot; but he is at the same time placed in the position of a non-freeman, and deprived of the elective right which those liabilities, by custom and Statute, expressly confer. He is an inhabitant and a householder for all purposes of pay and performance; but for elective rights he is neither the one nor the other.*

* In *Rex v Poynder*, (*Barn. & Cresw. v. 1*, p. 178,) an indictment against the defendant for refusing to take upon himself the office of Overseer of the Poor of St. Ann's, Blackfriars, where he, with others, carried on trade, but resided at Clapham Common, C. J. Abbott found for the Crown.

Mr. Common Serjeant Denman moved for a new trial, arguing that in *Rex v. Hall*, the object of the Statute was to confer a privilege [a qualification for Commissioner of the Court of Requests.] The object of the 43rd Eliz. was to impose a burthen on the persons described. *A different rule of construction ought therefore to prevail here.*

Per Curiam. When a similar question was under consideration last term, we were not insensible that a distinction might be attempted to be made between these cases, as when the legislature intended to confer a benefit, and others when it intended to impose a burthen. *We were of opinion that there was no foundation for such a distinction, and that the same rule of construction ought to prevail in all cases.* We have no doubt in this case that the defendant is a householder within the meaning of the Statute of Elizabeth. It was in evidence that he had enjoyed

The law cannot be construed to say that *A*, occupying premises wholly in trade or manufacture, say of the rental of 200*l.* and scotted at 30*l.* per annum—but who neither resides, nor makes any pretention of residence upon the said premises—shall not be entitled to a Ward vote; yet that *B*, under precisely similar conditions, save and except, that he does (either by himself or his servant) sleep upon the premises, *one* night in the year—shall have a vote! While at the same time no more than *two actual inhabitants* are severally entitled to vote for *any* premises, however extensive, and highly rented and rated; yet that a joint Stock Company of *twenty partners* (being freemen) occupying as above stated, and severally subject to the liabilities of such occupancy, would each be entitled to a vote in virtue thereof! Yet such are the anomalous consequences attendant upon the principle of

one of the privileges of a resident householder, for he had voted for a lecturer, which was a privilege belonging to the resident householders only.—Rule refused.

Not content with advocating a diversity of the rule of construction—the very measure and standard of judgment, Mr. Common Serjeant Denman also contends for an interchange of the position of cases. Thus in one case, *A* is a householder for burthens but not for a privilege; and in the second, he is a householder for a privilege but not for a burthen, accordingly as “the different rule of construction *ought* to prevail.”

the decision which rejected the votes of the non-resident householders upon the occasion mentioned.

It has been amply shewn, at the pages before referred to, that the principle of this decision is not the principle upon which the Act of George I, for regulating the city elections, had been formed, nor upon which it had been understood at an early period of its existence. And resting as do the elective rights of the Citizens of London upon that measure, nothing beyond an exposition of its operation appears necessary for the present purpose ; were it not also satisfactory to ascertain that that act was in reality, as it professed to be, the result of an appeal to Parliament for the reformation of abuses, by the restraint and disallowance of unauthorized votes ; and that its general operation had the effect of restraining and re-instating the electoral right upon an improved footing parallel to the ancient custom. This, upon several occasions, has been asserted and denied, upon particular questions then at issue. A petition passed at a mote of the Ward of Castle Baynard, in the year 1826, set forth that the Act in question contained "no enactment with respect to the right of voting for chief officers and parliamentary representatives of the city,

nor any enactment dispossessing in direct terms the Freemen of London of such right as previously held and enjoyed by them." The Committee for General Purposes of the Court of Common Council, in their report upon the Petition of the Inhabitants of Crip-plegate Without, in the year 1830, state that the elective rights as then established, were not only settled by statute, but also *supported by custom*. And in reference to the particular subject under discussion, Mr. Norton, referring to a Charter of King Edward II,* observes: "This clause establishes a most important point; namely, that by the ancient law of the city, it was not necessary that *the householder, who paying Scot and bearing Lot, represented the full citizen*, should continually reside, sleep, and diet within the walls, (a qualification which has sometimes been insisted on) but that *any residence as a personal*

* 1 Chart. Edw. II, § 9 That all who are of the liberty of the city and would enjoy the liberties and free customs of the city should be in Scot and Lot, and partake of all civic burthens according to their oath, under penalty of disfranchisement.

§ 10 That all who are of the liberty of the city, but who living without it, exercise by themselves or their servants, merchandize within it, be in Scot and Lot for their merchandize, like the commoners, under pain of disfranchisement.

occupier, by day or night, was as much as could be required; a contrary doctrine, as much at variance with the ancient common law principles of the civic freedom, as with the direct corporation ordinances, could not fail by disfranchising the great body of wholesale merchants and the higher order of retail shopkeepers, to entail the most disastrous consequences on the interests of the city."

In support of this opinion, the same author refers to the case *Rex v. Hall*,* and

* *Barn. and Cres. v. 1*, p. 123. This was an action upon a writ of *Quo Warranto* to ascertain if the defendant was duly elected clerk and registrar of the Court of requests of the City of Bristol; the question being whether several (seven in number) of the electors, Common Councilmen of Bristol, aforesaid, were respectively *Householders within the said city*, and as such duly qualified as electors in the said election, under the 26 Geo. III, c. 38, s. 8. [a general Act for the regulation of Courts for the recovery of small debts,] which superadded such qualification. The whole question therefore turned upon the common law acceptance of the term householder.

Selwyn, for the Crown, argued, that according to the ordinary acceptance of the word householder, it means the Master of a family living together. In *Johnson's Dictionary*, householder is interpreted Master of a family; and household, a family living together. The Act of Parliament required that a person to come within it should be the Master of a family living together within the district for which he acts. Now that would exclude from the right of voting all the seven persons who voted for the defendant. They did not reside within the city, but at

Rex *v.* Poynder; (*p.* xxiii, *n.*) and adds, that having once occasion to draw up an exposition, in the shape of a legal opinion, on the qualification of Citizens at Wardmote elections, the result of a laborious research into the au-

Clifton, and at several other neighbouring outparts. The learned gentleman then cited from Hargreaves Law Tracts, the well known Case of the City of London, respecting the exemption from the prisage of wines, and the judgment of Parliament thereon (*Rot. Parl.* 11 *H.* IV.); the Mayor of London *v.* the Mayor of Lynn, (43 *Eliz.*) upon the same; and thence proceeded to argue that these several cases all shew *householder* to be *pater familias*.

Adam, contra. The word *householder* must not receive so strict a construction. The true meaning is a *person who keeps a house and frequents it for the purpose of his trade or business*. It does not follow because "household" means a family living together that the word *householder* means the "*pater familias*." According to the argument on the other side, there is no difference between *householders residents*, and *householders*. But if so, how is it to be accounted for that the legislature continually distinguish between them? The word *resiant* is always added where actual dwelling within the district is required.

Abbott, C. J. The meaning of particular words in acts of Parliament as well as other instruments, is to be found, not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used; and the object that is intended to be attained.

The object of the Stat. 26 Geo. III, c. 38, appears to have been to unite respectability of character and circumstances in the place wherein the office of Commissioner

thorities on the point was, that the foregoing position was sanctioned by the principles of Common Law, by uniform usage in the city, by the city records, by the consentaneous opinion of many great Lawyers taken expressly on the point, *and by the language of the Statute*, 11 Geo. I, c. 18, regulating Wardmote elections.”*

To conclude this argument, Mr. Schultes, after labouring for the disfranchisement of the Liverymen of London, upon the ground that as Liverymen, residence is not enjoined of them, demands as a matter of expediency, the privilege of non-residence for the *freemen*. “A contrariety of opinion, has prevailed” says he “with regard to what is considered such a residence as would entitle any indi-

was to be exercised, with a habit of access and visit to the place. The object is attained by the exclusion of lodgers or inmates having no permanent interest in the place. The word is *householder* not *housekeeper*.

It will be obvious to every one who has the slightest knowledge of the habits of persons engaged in the most respectable branches of trade and Commerce in all the great towns of England, that an exclusion of persons in the situation of these gentlemen would be an exclusion, in this and many other cases, of a very large portion of those who are best qualified for the direction of the particular duty that may be the subject of enquiry. Judgment for the defendant.

* Com. on London, p. 439.

vidual to *local privileges, or constitute him an inhabitant*. In early times when the obligation which every man was under to be in freepledge, rendered it necessary that his domicile or usual place of abode should be known, this was commonly indicated by his place of nightly repose. But as the law on some occasions prohibits the execution of certain legal processes after sun set, *the criterion of inhabitancy should be established not by a man's lodging at night, but by the place, shop or office where, within the usual periods of commercial business, he might be found to answer summonses or other matters for the fulfilment or discharge of duties to which he might in his individual capacity of Citizen, parishioner, &c. be subject*. It is agreeable to common sense and the ordinary course of things that a plurality of habitation should give the owner a right to elect either of them to be his particular domicile."*

So directly opposed to the whole course of his previous arguments as is the above position, it is not often the case that an author, and one of so much ability, so complacently abandons a favorite theory, by admitting even as a matter of expediency, the true and unde-

* Enquiry into the Elective Franchises of the Citizens of London, p. 30.

niably ancient rule, acknowledged nearly as far back as there are records of the existence even of London itself, as an incorporated city, and the establishment of its special freedom, as an exclusive protection of its trade.

SYNOPTICAL REVIEW
OF THE
ELECTORAL FRANCHISES
OF THE
CITY OF LONDON.

IN the frame of the Corporation of London, says Mr. Noorthouck, (*Hist. Lond.*) this irregularity may be observable. At first view it is natural to think that every Citizen, being a householder ought to enjoy all the privileges under the Corporation; but time has introduced a distinction in which this equity appears to be warped. The citizens at large, do indeed, as householders, elect their Aldermen and Common Councilmen; but have no share in the choice of Mayor, Sheriffs, or Members of Parliament. Were the Members sent by the city, either elected by the Citizens at large, or if that was thought impracticable *by the corporate body deputed by them, and out of that body, the plan would be consistent*

and perfect : whereas the Members of Parliament, the chief Magistrate, Sheriffs and other subordinate officers, are chosen by a select few of the several city companies, whether householders or not. Hence the citizens collectively are represented in Common Council, but not in Parliament; nor are the Mayor, Sheriffs, &c. city officers in this point of view; but act for or by commission from the livery only of *those* city companies, that have liverymen among them; which liverymen however, unless as householders, have no voice in the election of Aldermen or Common Councilmen, notwithstanding their peculiar privileges in other respects. From this want of orderly gradation arises a confusion of powers and a division of interests, which though they may be so far corrected in idea as to operate uniformly in general; are nevertheless founded in defect, and at critical times are liable to produce disagreeable contests."

In these remarks of the historian are embodied the objections that have at various times been raised against the electoral powers of the Livery of London, and their "usurpation," as it has been termed, of a legitimate appurtenance of the Scot and Lot householder. Yet while many writers have pointed out these apparent inconsistencies, and some

have given way to assumptions founded in a total misconception, or deficiency of information, none have sought to retrace the several invested powers to their distinct inchoation, or noted the particular circumstances of their transition or reformation from such original appointment;—an enquiry which would not only have shewn an orderly gradation in the institution of the several electoral powers; but also that however a recent line of policy may have deemed it advisable in one particular, to extend the city franchise beyond the limits of its citizens* yet that the appointment of the Livery of London to their electoral and representative position, so far from being an usurped and retrograde assumption, was not only an important extension of the franchise at the early period when it took place; but also that the measure was perfectly legitimate in its appointment, and bounded by a guaranteed qualification in the visible cloathing of freedom and citizenship.

The plan pointed out by Mr. Noorthouck

* It will not have escaped observation that the household voter for the City of London, under the Act 2 Will. IV. cap. 45, *is not required to be free of the City*. So that the limitation of the number of its electors for parliamentary representatives, depends upon *the number of non freemen* the city authorities permit to trade within its "*liberties*," and to become qualified householders under that Act of Parliament. The general policy of the legislature however,

as so "consistent and perfect," was in fact the ancient rule which had been found incomplete and defective;—existing down to the period when the Livery Companies, embracing the freemen in trade, and representing the special interests of the incorporated city, had the franchise thrown open to them. It was also the plan which, during the Commonwealth, by Act of Common Council, superseded the Liverymen in their electoral privilege, when, abandoning the distinction between freeman and frankpledger, that Court declared every *inhabitant* to be an original elector. To have made the plan consistent with the trading incorporation, every *inhabitant* should have been a *freeman*;* and even then the

in aiming at the subversion of corporate monopolies is hardly to be questioned, when the impolicy of the internal regulations of the city has permitted the number of its liverymen to exceed that of its freemen, so that such a nondescript as a *Liveryman-non-freeman* should have been nominated and elected to an important office of authority over its citizens.

* Sir Edward Coke says inhabitants anciently were understood to be householders—2 *Inst.* 702; and thus qualified, they may be supposed at the same period, most generally to have been freemen; but a wide distinction had arisen when the *Livery* became the distinctive mark of a freeman householder. In the 13th Edward I, in consequence of the frequency of crimes and disorders, the Aldermen were directed to make strict search, and allow none but freemen to reside in the city.

perfection in practice is not the less questionable, when it is considered that the effect of the original arrangement confined the right of appointment, to *forty* persons; and that at no time did the number of *specially summoned* electors exceed the limit of the present corporation.

It is a common error, to attribute to our early institutions an unrestrained liberty of action, when (to confine the observation to the question under notice) there is no evidence that will not shew the reverse position to have been the fact. The voice of the people was unheard when the mass of them were under the ban of bondage; nor was it until after the "oppression" of the Norman yoke, that in this country, man was declared superior to the live stock upon the soil.* Where then were his general elective rights?

The liberties, even of London itself must be viewed comparatively with the general condition; and Dr. Brady in reviewing its early Charters, adopted the true though unpopular interpretation of them, when he circumscribed

* It was only in the Reign of Henry I, that the Convention of Estates (or Parliament) assembled at Westminster, declared that there should be "no more buying and selling of men in England as hitherto accustomed, as if they had been kine or oxen."

the grant to the circumstances of the times, and limited the franchise of the grantees to an emancipation not inconsistent with the state of society which then existed. Strange, that the natural element of liberty is to be sought in the emancipation of the slave!*

* It is something more than an hypothesis that London and other walled towns, received importance and an accumulation of habitants by becoming the licensed refuge for escaped serfs! Thus Glanville, "if a native (*servus*) quit for one year and a day to dwell in any privileged town, so as to become one of the same community (*scilicet gildum*) he shall be received as a citizen and liberated from his villeinage.—*Lib.* 5, c. 5. And from the city records it appears by a return certified into the Chancery by Henry Barton, Mayor, 7th Hen. VI, (an. 1428) and the Aldermen of the City of London, in virtue of a letter from the king, "That in the time of holy king Edward heretofore king of England, and before from all time no memory of man to the contrary, there was extant such dignity, liberty and Royal custom, and among others, had, used and approved in the City of London, (which is and from all time hath been called the *free Chamber of the King of England*) to wit,—That every servant whosoever he were, that came to the City of London and tarried in it for a year and a day *without reclamation of his Lord there*; afterwards he may, ought and hath accustomed *through his whole life*, so freely and securely to tarry there, as it were in the house or chamber of the king. And thence it is that the same holy king Edward, amongst other things by his laws remaining of record in the Treasury of Guy-hald of the said City, appointed and ordained that the said City may have and keep everywhere by one inviolability always, all her old usages and customs wheresoever

"In our ordinary writers," observes Dr. Brady, in treating of Cities and Boroughs, "little else is to be found but prescription. and pretended usage; and possession time out of mind, vouched for the great independent right, they have claimed and do challenge; and by the notions these writers have, and their readers cannot but have of them, according to their information, they (the cities and boroughs) seem to have been æternal, or

the king himself shall be, whether on an expedition or otherwise.

"And afterwards, William the Conqueror, king of England, by charter confirmed to the Citizens of London their privileges, &c. And among other laws by him at the said City made, with the consent of the wisemen of the whole kingdom, and remaining in the said Treasury, appointed and ordained, that if servants remain without complaint by a year and a day in a borough compassed by a wall, or in Castles or in the Cities of the King, (whereof the said City of London to that time and from all time before was one, and the most principal of the kingdom) from that day let them become *freemen*, and *ever free* from the yoke of servitude."—*De Heretoch. & Libertat. Lond. fo. 113, Recordat., Lond. fo. 36.*

Without going further into a subject by no means uninviting, it is evident, that a refuge within enfranchised towns afforded sanctuary to the Slave, and an ultimate emancipation, which constituted all the immunity appertaining to an original freepledge. *Lao worthiness* however, when its operation drew so wide a distinction in human character, was a custom not without its extreme value, and might well attract the envy and admiration of

at least cœval with the creation ; and so many ready wrought and framed commonwealths lifted out of the chaos and fixed upon the surface of the earth, with their walls, gates, town or guildhalls, and all extravagant, uncontrollable and absolute powers and absurd rights they have of late years pretended to."

Severe as are these remarks of the able op-

the surrounding serfs. Nor were they backward in endeavouring to change the quality of their personal responsibility. A measure of legislation, points out the legal means by which emancipation was completed, and that a check was found necessary to a custom which threatened the extinction of compulsory servitude by placing enfranchisement in the heels of the slave.

By the 9th Richard II, c. 2, it is declared, that whereas divers villaynes and neyfes, as well of greate lordes as of other people as wel spiritual as temporal, *do flye within cities, townes, and places enfranchised, as the citie of London and other like*, and feyn diuers suites against their lordes, *to the entent to make them free by the answer of their lordes* : It is accorded and assented, that the lordes nor other *shal not be forbarred of their villaynes* bycause of their answer in lawe.

In the 7th Hen. VI, the custom was pleaded in answer to a Writ of *Nativo habendo* brought by a lord to recover his villein, when the custom was adjudged a good return by the sheriff. The writ of *Nativo habendo* was in the nature of a Writ of Right to recover the inheritance in the villein,—*the freehold of his body!!!* But if the villein purchased a Writ *De libertate probanda* before the lord had taken out the *Pone*, it was a *Supersedeas* to the lord hat he proceed not on his Writ.—*New. Nat. Brev.* 171.

ponent of popular rights, they are not without their truth. Prescription is a term of extensive import, and may sometimes be employed to fill up a doubtful void which can be no otherwise supplied. An early error—a popular encroachment, and even a private wrong, may alike become law by the force of usage; but to go the length of the learned Doctor, and to confine the origin as well as the confirmation or augmentation of acquired rights to the records of existing Charters, would be to circumscribe the facts of history to the narrowest limits of legal proof,—to place the evidence of every truth at the hazard of mischance and wilful destruction; and to supersede the wholesome evidence of reputation, in reference to times when much was left for tradition alone to transmit to posterity.*

* It is almost unnecessary to cite instances where history affords so many. Public investiture, the livery and seisin of lands, the manumission of slaves, marriages and other rites and acts done in the presence of witnesses, had their record and legality in oral tradition, even after Charters and deeds had become common: the perambulation of boundaries is still in use.

At times some notable act was done in record of a fact. In 925, king Æthelstan left his knife upon the high altar of St. John of Beverley, in record of a pledge he had given. *Dugd. Monast. Anglic. tom. ii. p. 127.* In memorial of the homage of Malcolm, king of Scots to William I, of England, a stone cross was erected in the middle of the

London claims to be a city by prescription ; and if the question were to be mooted, the argument probably would turn upon the concomitant circumstances which distinguished a city. "With us, as in other regions," says *Dr. Cowell*, "it signifieth such a town *corporate* as hath a Bishop and a Cathedral. Yet *M. Crompton*, in his jurisdictions, where he reckoneth up the cities, leaveth out *Ely*,

mountains of Stanmore, in Richmondshire. *Camd. Brit.* In 1096, William II, delivered to the Abbot of Tavistock, as record of seisin, an ivory knife, which was afterwards deposited on the shrine of St. Rumon. *Monast. Anglic.* p. 489. And in 1171, Malcolm, king of Scots, did homage for that kingdom to Henry II, of England, leaving his breastplate, sword and saddle to be kept in the Cathedral of York, in perpetual remembrance thereof. *Knighton inter Decem Script.* In the same light is to be considered the *old sword* which Earl Warren produced in answer to the *Quo Warranto* calling upon him to shew the title to his estate, viz. as *evidence of the seisin of his ancestor*, by the gift of the Conqueror, in the terms then employed in creating an earl by the tenure of a county, viz. *tenendum ita libere AD GLADIUM sicut ipse* (the Conqueror) *tenebat regnam Angliæ.* (*Camb. Brit.*)—and not entirely as the occurrence of romantic bravado with which history has invested it.—See *Blount's Ten.* p. 9).

In ascribing to the legal memory of man, an extension not anterior to the reign of Richard I, it seems probable that reference might have been had to the vast destruction of documents during the violent contention of the Empress Matilda, and Stephen for the throne ; and the great injustice of demanding the production of proofs which might

though it have a Bishop and a Cathedral, and putteth in Westminster, though now it have no bishop. According to *Aristotle*, *Civitas* is defined to be a certain or uniform government of the inhabitants.* Et Cæsar civitatem vocat populum eodem jure utentem.† But these are the general definition of a Commonwealth, and not of a City, as now understood.”

When Dr. Cowell wrote, cities were “towns *corporate* ;” but the date of incorporations is known, and London was denominated a city long before it was incorporated. If a bishop and a cathedral constitute a city, then has London little need of appealing to an indefinite prescription for its title, the origin of those institutions being circumscribed by dates,—and at a time when, instead of city, London is described by the term *borough*,—long anterior to any known town by incorporation.

Dr. Brady assigns the reign of Henry I, as the earliest date of Charters to incorporate cities and boroughs, when the custom prevailed

and then have been in existence. C. J. Blackstone says the rule was adopted when, by the Statute of Westminster 1 (3 Edw. I, c. 39), the reign of Richard I, was made the limitation in a Writ of Right; which, however, rather strengthens than detracts from the conjecture.

* *Politicorum*, lib. 3, c. 1.

† *Camd. Brit.*, p. 310.

in, and was introduced into England from, France*—the characteristics being referrible to a *special freedom*, and an *exclusive privilege of trade*. *Du Cange*, in treating of town Corporations, describes the constitution of such an institution to be, *Scabinatus, Collegium, Majoratus, Sigillum, Campana, Berfedus, et jurisdictio*." A College or Council, a Mayoralty, a Common Seal, a Bell to convoke the members of it, and a jurisdiction.

If these be the constituent particles of the term, then has the city of London acquired her characteristics at different, and at partly known periods. The right of jurisdiction is claimed to have been granted by Hen. I.† The privilege of being governed by a Mayor of their own election, in the place of a Custos of the king's appointment, was granted and confirmed to the *barons* by the 4th charter of John. The Council may with safety be ascribed the immediate consequence of the act of incorporation; yet the Common Seal, now a spe-

* Dr. Robertson says cities and towns were first erected into corporate communities on the Continent, and endowed with many valuable privileges, about the eleventh century (*Char. V, i, 30*). Mr. Payne enters largely into the policy of the French Monarch, in incorporating the towns of France.—*Treatise of Municipal Rights*.

† "To appoint their own Sheriffs; to hold pleas of the Crown, and none other to be justice over them. To enjoy their goods according to the city custom."—*Chart*.

cialty of an incorporated body, appears only to have been granted by Henry III, in the ninth year of his reign,* 1225; and although the high court of Hustings, is of Saxon in-

Hen. I. But a record in the Exchequer shews that in the 5th Stephen, the Londoners paid a fine of one hundred marks of silver, that they might have sheriffs of their own choice.—*Mag. Rot. 5 Steph. Rot. 15, a.—Madox.*

* Sir W. Blackstone observes that the impress of the Common Seal is the act which gives authenticity to the will of a community; for a corporation being an invisible body, cannot manifest its intentions by any personal act or oral discourse: it therefore acts and speaks only by its common seal. The particular members may express their private consent to any act, by words or signing their names, yet this does not bind the corporation; it is the fixing of the seal, and that only, which unites the several assents of the individuals who compose the community, and makes one joint assent of the whole.—*Dav. 44. 48.* With this power of concentration, the device of the City seal was encircled with the inscription "*Sigillum Baronum Londoniarum.*" Stow saw an impression of it which he describes, affixed to a lease granted by the corporation, bearing date 1373, 48 Edw. III. This seems to have been the original seal, and was destroyed, being "small, unapt and uncomely for the honour of the city," and the seal subsequently employed, made and adopted "in a full assembly of the Mayor, Aldermen and Common Council, in the upper chamber of the Guildhall," in the 4th of Rich. II, and in the Mayoralty of William Walworth, but *before he was knighted*, and consequently before Tyler's rebellion. The record of the circumstance is cited by Mr. Seymour, (*Hist. Lond. v. i.*) to disprove the vulgar tradition related by Stow, that the bearing on the City shield represented the dagger of Sir William Walworth, or that the city

institution, as its title implies,*—probably the most ancient existing Court in the kingdom,—which lord Coke is compelled to admit of original jurisdiction, and of earlier authority than his own favoured Courts of Westminster Hall; yet it seems probable that in administering the By-laws for their own internal government, and adjudicating differences in which a citizen was a party,† that the proceedings of this ancient Court were exceedingly primitive,—that it was not of record,‡ and that the citizens had no Court of Record until the 30th of Henry III, when at the cost of fifteen casks of wine they purchased the privilege *pro faciendo recordo* within the city.§ The Chamberlainship was long

armorial bearings received any augmentation in consequence of that service.

* Dur-ting, the House of Pleas.

† No citizen to plead without the walls of London.—*Chart. Hen. I & II, 1 John, &c.*

‡ None but the king's Court, except by special license, were understood or allowed to have *records*. (*Glanv. l. 8. c. 9.*) The privilege enjoyed by the king's Court, arose from the superior dignity of the persons constituting the court, rather than from the circumstances of their having any particular memorials in writing.—*Crabb, Hist. Eng. Law, p. 121.* It is a custom in London, to bargain and sell lands by parol, viz. by word of mouth, (*4 Inst. 675.*) And by custom lands will pass by bargain and sale without enrolment.—*Stat. 27 H. VIII. c. 16.*

§ *Civitas Londoniæ, r. c. xv. doliæ vini pro faciendo*

in the private hands of individuals who accounted at the Exchequer for the duties due

recordo infra civitatem suam (Mag. Rot., 30 Hen. III.)
The first person known to have held the office of Recorder was John de Norton, alderman, in 1298, the 26th Edw. I. By reference to the city books, his duty was "always to sit on the right hand of the Mayor in recording pleas and passing judgments; and by whom, records and proceedings had before the Mayor and Aldermen,—at *St. Martin-le Grand* [where the justices appointed by the King's commission used to sit in the church],—ought to be recorded by word of mouth before the justices assigned there to correct errors."

In 1304, the 32nd of the same king, John de Wengrave, alderman, was appointed Recorder, with a salary of ten pounds a year; and on Monday after the conversion of St. Paul, was sworn before the Mayor, John le Blund, the Sheriff, and Aldermen present, "well and faithfully to render all the judgments of the Hustings, after the Mayor and Aldermen should meet concerning their pleas, and agree together; and also all other judgments touching the city of London. And that all the pleas of the Hustings, presently after the Hustings is finished, he shall oversee, order, and cause to be enrolled according to the things pleaded; and that he shall come prepared to despatch the business of the city, &c., when he shall be lawfully warned by the Mayor and Bailiffs, &c."—*Liber Horne*.

Originally, as far back as the memoranda of the office are extant, and for a century afterward, the recordership was held by one of the Aldermen; and at an earlier period, a part of the business which has since fallen to the duties of the Recorder, seems to have appertained to the "great franchise" of Castle Baynard. On the 12th March, 1303, and in the mayoralty last mentioned, Robert Fitz Walter acknowledged his services to the city for his Castle of

to the King. It appears first to have been granted out by the Crown in 1204, the 6th of

Baynard, and was sworn on the Evangelists that he would be true to the liberties thereof. Among other privileges respecting which the "Citizens were bound to do him right," he claimed for him and his heirs, that "when the Mayor held a great council, he ought to call the said Robert to be with him, to be sworn of the council of the City against all people saving the King and his heirs; and when the said Robert came to the Hustings of the said Guildhall of the City, the Mayor or his Lieutenant ought to rise against him, and set him down near unto him; and so long as he is in Guildhall, *all the judgments ought to be given by his mouth*, according to the record of the recorders of the said Guildhall,"—i. e. by prescriptive right.

Apart from the present generally known duties, the antiquity of the office is coincidental with the derivation of its title [*Recordator*, à *Recordari*, Fr. *Recorder*, to call to mind], and the ancient right, to the present time transmitted, of "recording by word of mouth" the prescriptive immunities of the city. Before the practice prevailed of entering proceedings of courts upon a roll of parchment, under the name of a record, the term was used in the sense of *testifying on recollection*, it being usual for litigants to have their friends in court to witness the proceedings, and to take minutes of them, or treasure them up in their recollection, that when called upon they might *record what passed in court* (*Steph. on Plead.*) In this way, in an action for a breach of final concord, justices were to be summoned to appear in court, and record how the suit came to an end which was before them (*Glanv.*, 1, 8, c. 5),—a practice, of which the absolute testimony of a record of court is the more modern improvement.

Thus defined, the duties of a Recorder seem to originate

John, when Will. de St. Michael purchased it for the sum of one hundred pounds, and the annual rent of one hundred marcs.*

Of much earlier date, probably, the bell assembled the burghers or citizens to hear declared the proclamation of the King, or of their immediate governor, before they had any representative government, and in the earliest era of embodied rights.† The mote

in the oral testimony of prescriptive evidence,—are applicable to times anterior to the general adoption of written testimony, courts of *Record*, or Records themselves as now understood—and are particularly identified with the genius and characteristics of the common law. Records are mentioned to have been necessary judges in the courts of the Dukes of Normandy (*Grand. Coust. Norm.*, c. 107), whence probably their introduction into Britain after the Conquest; and, in the true spirit of the original character, Lord Coke says—"the Customs of London are to be certified by the mouth of the Recorder."—1 *Inst.*, 288.

* Madox, *Hist. Exch.*

† That the people met at "Pouls" for public business, anteriorly to the existence of the incorporation of the city, appears pretty clear; and they were there assembled when that mode of government was appointed to them. In very early times, the folcmotes were held in the churchyard, which may not improbably have had reference to the magistracy of the Saxon bishop; and the bell employed was without doubt that of the church. In the case of a *Quo Warranto* issued the 15th Edw. I, it was among other things pleaded, that the citizens had anciently used to be assembled at Paul's Cross, by the sound of a bell.

bell was in use by the Anglo-Saxons to assemble the people, and is mentioned in the laws of Edward the Confessor.

In the 10th of Edw. II, upon a dispute respecting the church-yard, the citizens claimed the eastern part thereof to have been the place of the assembly of their ancient folcmotes; and that the great steeple there situated held their common bell. The cross served not only as a rostrum whence to address the people on temporal matters, but also as a pulpit for the exhortations and anathemas of the church. The record before referred to mentions the bell-tower as a stone erection, to which Sir William Dugdale assigns the date of 1216 (*Hist. St. Paul's*). Stowe speaks of "the *Clockier* or Bell-house, in place of which, in old time, stood the common bell of the city."

The enclosure of the church-yard by a stone wall was commenced in the reign of Henry III, but was not completed in the reign of Edw. III, though it progressed materially in that of Edw. II; and by stat. 13th Edw. I (1287), for the honor of holy church it was commanded, that neither fairs nor markets should thenceforth be held in church-yards (*s. 2, c. 6*); but assemblies of the populace, demonstrative or auditorial (*post. p. clix*), were occasionally held at Paul's Cross, long after the more legitimate purposes of the burgmote had devolved on a special commonalty: and the bell, in the time of Edw. III (1354), still continued in use as the summons to council, at the Guildhall, of the members of the communia under the special incorporation (*City Rec., lib. G. 19; 142 Herg., 187*). The cross was several times destroyed and re-erected; and the bell-tower remained, until Henry VIII staked and lost it by a throw of the dice—when the winner, Sir Miles Partridge, pulled it down and sold the materials.—*Lond. Rediviv.*, v. iii, p. 182.

ENFRANCHISED LONDON.

THE antiquity of enfranchised London is to be sought in the origin of its Wards; and these, under other denominations, are supposed to have assumed a settled form in consequence of the division of the country into shires and hundreds by king Alfred.

The Saxons originally divided their Conquests into as many *shares* as the king had companions,—hence *Comites*.^{*} These portions of land originally called Shares and latterly *Shires*, were then so many associations, or societies in public charge or service,[†] as were the Cantons in Germany.[‡] The shires were subdivided into trythings or laths, hundreds or wapentakes, and thence into tythings, which also at first are found, in some parts, promiscuously to have been called boroughs as well as tythings.[§] The free borough or city

^{*} Mirror. c. 2. Fleta l. 1. c. 17. Bracton, l. 2, c. 17.

[†] Bacon on Governm. 65.

[‡] St. Armand, Hist. Essay, xlv.

[§] Lamb. per. of Kent. p. 24. A probable origin for the distinction and the diversity of limit, is furnished in the ingenious theory that tythings, their divisions being found-

, of London was ranked as a county, and the inhabitants of the sokes composing its limit, were associated into *frithgilds* of an indefinite number of freepledges, with the character of

ed on the number of families, and not on the extent of ground, must be unequal; for the proprietors of land, all resided on their estates, whence in after ages they were denominated Manors, à *manendo*. And as there were no small freeholders in those days nor for long after, ten such families must necessarily be remote from one another, and occupy a large space of ground; whereas tradesmen, because many of their Arts are auxiliary and subservient to one another, were engaged by the prevailing tie of interest as well as the natural inclination to society that is planted in human nature, to unite and live contiguous to one another.

To discover, therefore, what is to be understood by ten families (the society constituting the ancient tything) we must look into the circumstances of those ages. The lowest rank of men among the proprietors of land were the thanes. What his possessions were may be discovered by the law that advanced a *Coarl* or boor to an equality with a thane by his having five hides of land, a hall, a kitchen, and a church. Here is a just description of a lord of a manor: these proprietors of land, with their sub-tenants, tillers of the soil, their wives and children living in little huts on some part of their lord's estate (the *Cottarij*, *Bordarij*, &c. of Domesday) as well as the *servi* of different casts supplied from his own board, constituting one family; and he the lord (Sax. *Plafon's*, giver of bread—the ancient *pater familias*) over the whole.

The rural tything consisting of ten such families as here described; the same district among the trading part of the nation can hardly be conceived to have consisted of ten families of shopkeepers such as we now see. But it

hundreds ; the precincts being the lesser proprietary subdivisions, correspondent to the tythings in the rural districts. In the time of Æthelstan, the police government of the frithgilds was the subject of a statute.*

Thus, under the Saxon rule, and immediately preceding the Norman Conquest, Londonborough had the same legal polity that distinguished a Saxon county.† It was a concentration of Leet jurisdictions, each comprising

seems more probable that several handicraft persons associated themselves in partnerships or companies, in Saxon called gilds ; nor is it unlikely that some, more eminent, might employ great numbers of artificers,—who were some, perhaps, hirelings, others their slaves,—to work under them ; and if we understand by the words ten families, amongst the trading part of the nation, ten such as are here represented, we may well conceive that they constituted towns and boroughs.

By the constitution of the Saxon laws, rank was annexed to possessions ; and, as it has been seen that a *Coarl* might become equal to a king's thane by accumulated possessions of land, so also it was provided, that a merchant who crossed the seas three times on his own substance, should be entitled to the same consideration and rank. The impetus of modern times has outrun the equivalent, for we see many single tradesmen of much greater wealth and power than many lords of manors, and trading boroughs vested with a greater share in the legislature than fifty of them.—*St. Amand, Hist. Essay*, p. xlv, *et seq.*

* *Judicia Civitatis Londoniæ—LL. Ang.-Sax.*

† The City has preserved its characteristic in this par-

a Soke or Gild: the only difference being, that within the enfranchised limit *all were freemen** (that is to say, *not serfs*), and consequently law-worthy; and hence the term free gilds,† by which those jurisdictions were known.

Spelman says the term freegild was applied to the jurisdiction afterwards known by the term Friburg, from the Saxon *Friborh*oe, *free-pledge*.‡ The assembly and review of these

ticular. "Le cite de Londres, que est come un countie deins luy mesme, et chescun gard deins le cite come un ville aperluy."—*Year Book*, 7 H. VI.

* A freeman was the subject of the king, but a serf the exclusive property of the owner of the soil:—"If any kill a freeman, the king shall receive fifty shillings for lordship" (*LL. Ang.-Sax.*, p. 2). By the time of Henry I, freemen had risen in estimation and value *cent. per cent.* A charter of that king declares—"A Citizen shall not be amerced beyond his *were* (i. e. the value of his head), viz. one hundred shillings.

† Wilkins, *LL. Ang.-Sax.*

‡ The *Friborgsheofod*, or *Borghealder*, the chief man of the *friborg*, or tything, bears the same analogy to the governing power, as *Ealdorman*, a Senator or Senior. The origin of the frankpledge is to be ascribed to the same policy of Alfred that divided the country into districts and subdivisions for the establishment of regulations of police, and the prevention of robbery and crime; when every freeman of the age of twelve years was required to be enrolled, and pledged by an oath to the king's peace. Consimilar regulations with those of the Saxon Hundred were observed in the London Wards for several centuries.

freepledges was called the Court Leet or Lað, from Laðian, to assemble.

The supervisional government of the borough was in a Reve, and a Bishop who acted as Magistrate under the appointment of the Archbishop of Canterbury; and the freegilds were each under the immediate rule of an Alderman whose jurisdiction was similar to that of the Sheriff over the hundred.*

In these subdivisional Courts, as well in towns and cities, as throughout the rest of the kingdom, all dwellers were to be enrolled in frankpledge, either as free householders or as inmates.†

* 3 Inst. 69. The *centenarius* or chief man of the hundred, was among the Saxons called hundredarius or *aldermannus* hundredi. Like the Sheriff in his county, the Alderman in his Ward became the king's Collector, and had the responsibility of the bailiff of a franchise in respect of accounting to the Exchequer for the Tallage of his Ward—(*Stat. for the Exchequer*, 51 Hen. III.) In the 2nd Edw. II, a Writ of *Distringas* issued out of the Exchequer against Nich. de Farendon and others, aldermen, and their executors, to compel them to render an Account. *Madox Hist. Exch.*

† By the custom of the Saxons, when a stranger first came into a soke, the person under whose roof he took his permanent abode was responsible for his good behaviour. If he lodged but one night he was considered uncuð or unknown; the second night he was called his guest, *τρανιχτε γερε*; but the third night his entertainer was supposed to have some certain knowledge of his inmate,

By the institutions of Alfred, the free inhabitants of the various districts into which the kingdom was divided, were to elect their own Magistrates. Thus the ancient govern-

and consequently he was set down as his host's own man —*hyn nyste apn hyn*: and this was agreeable to the practice which prevailed in the wards; and an important ingredient of the charge to the Inquest jury. By the ancient Articles of Wardmote, also, Constables were to certify new comers, and to search for them once a month at furthest, so that every man above the age of twelve years might be in frankpledge, and *sworn to be loyal to the King's majesty*. Special charge being given to every innholder or other person who might receive persons to lodge or sojourn in their house above two days, that before the third day coming they should give notice to the Constable of the precinct of the name, surname, profession, trade or place of service of such person, and for what cause he had come to reside there.

The "Othe of Frankpledgers as of Foreigners," was as follows:

Ye shal swere that ye shalbe good and trewe to our souerayn Lord ye king of England and to his heyres kinges, and the kinges peas ye shal kepe and se that hit be kepte, and to alle the mynistres of the cite ye shal be obedient and at alle tymes ye shalbe ready to helpe the officers of the cite in doying of their offices for resting mysdoers in kepyng of the kinges peas, and for to folow them Stret to Stret and Ward to Warde vnto ye tyme they be arrested and brought to oon of the countours, and if ye knowe any congregacion or conuenticulis of ani mysdoers w'in the Warde ye shal doo thaldirman to wete therof, and all other poynts within the Wardemot ye shal wel and truly kepe, so helpe you God and by this boke—

- ment of enfranchised London was quite independent of the king. "This" commences one of the laws of Æthelstan, "is the agreement which the Bishop and Reves* belonging to London-borough have resolved upon, and with pledges confirmed to observe;" and then are recited many resolutions for mutual defence against robbery and violence, entered into by the freegilds over which they presided.†

Arnold's Chron. v. 1. The ancient oath of frankpledge is now represented by the oath of allegiance.

* Reve alias Greve (*præpositus*) Gerefa (*præfectus*)—(*Lamb. expl. verb. Sax.*) is the bailiff of a franchise or manor. *Greve, dicitur ideo quod jure debeat Gritha, i. e. pacem ex illis facere, qui patrie inferunt Væ, i. e. miseriam vel malum* (Hoveden, annal. fo. 346 b.: hence Grithbreach, a breach of the peace. Thus Reve became the fundamental of Shireve (Sheriff) Portreve, Churchreve; and Fleta mentions *Sokereve*, the lord's rent gatherer; otherwise mentioned as the lord's deputy, holding his Courts and receiving his dues and services: such an officer had the Fitzwalters, lords of Castle Baynard, and now represented by the Alderman's deputy.

† Wilkins LL. Ang. Sax. The term *gild* appears to have been applied by the Saxons to all associated bodies subject to a common contribution (from *gildan*, to pay); as well as a tribute; and sometimes an amercement. Thus the contribution and local liability of the Saxon frankpledge was the Scot and Lot of the modern rated inhabitant of a Ward. William I, granted to the Abbey of Westminster eight hides of his demesne land belonging to the manor of Piriford free and quit *ab omni consuetu-*

The *freedom* of the locality within the walls of London is thus coincident with the earliest institution of the Common law, preserved and acknowledged at a period when the kingdom generally was subjected to Norman institutions, and confirmed to the enfranchised inhabitants by the Charters of subsequent monarchs.* But this freedom, it has been seen,

dine et censu pecuniæ quæ GELD vocatur anglie.—Form. Anglic. n. 396.

* The charter of William I, recognising the customs and free privileges of the men of London, was granted to them at the intercession of William, Bishop of London, a Norman; and some idea may be formed of the value of the grant, by the exemptions and privileges it guaranteed, from a circumstance related by Baker, that in grateful remembrance of the service rendered to them, "the Lord Mayor and Aldermen, upon the solemn days of their resort to St. Paul's, *do still use* to walk to the grave stone where this Bishop lies interred"—*Chron.* 1679, p. 27.

It has been a matter of frequent argument what in fact were the privileges recognised by the Conqueror. His Charter, as it is commonly termed, contains no new grant, but merely a recognition of privileges previously enjoyed; and these are only to be appreciated by a comparison with the condition of villeinage which elsewhere prevailed. Dr. Brady observes that almost all freemen had the benefit of the law, but men of servile condition had not; especially such as were in *Dominio* (in *Demesne*) for they received justice from their lords, were judged by them in most cases, and had not the true benefit of the law; so neither could their children be their heirs, for they held their lands and goods at the will of the lord, and were not

was the mere enfranchisement from compulsory servitude—the emancipation of the slave,—and common to each of the district or local governments of the aldermen. A refugee serf becoming an inhabitant of the free or royal burgh,* admitted and sworn into the frank-

sure to enjoy them longer than at his pleasure. That the burgesses of London had obtained of the Saxon kings several liberties and immunities is undoubted, and amongst them was one to be so far free as not to be in *Dominio*; but to remain in the same state and condition in which they were in king Edward's days.

It is clear that many if not most burgesses of other burghs were in *Dominio* either of the king or some other lord or patrons in the time of king Edward; and the Londoners might fear the Conqueror would break upon their privileges and reduce them to the same condition.—*Treat. on Burghs.*

A remarkable illustration of Dr. Brady's position, occurs in the case of the Ward of Portsoken, which being by charter, liberated from demesne, and granted by the representatives of the original feoffees to the Priory of the Holy Trinity at Aldgate, the Prior, as *lord of the soke*, became ranked and sat in the City Councils as Alderman. Mr. Allen in his history of London, appears to have supposed the Prior sat as the representative in Council of the City Church, to take care of the clerical interest, as the bishops are supposed to sit in Parliament. The cases however are so far parallel that the title of both lay in the tenure of their temporalities; though the bishop of Sodor and Man not holding immediately of the king, cannot, upon the feudal distinction of tenures, be a lord of parliament.

* Whatever honor may appertain to the distinction of

pledge of one of its districts, became the subject of the king and a freedman. Hence in

being denominated a *city*, most of the important privileges which London enjoyed were *borough rights*, peculiar only in the power and good management which for ages preserved them from encroachment or annihilation, not infrequently by an enormous pecuniary sacrifice to the merciless rapacity of a greedy monarch.

As the present cities were originally boroughs, so a distinction existed between a borough and a town. The word borough, derived from the German *burg*, signified no more than a place where people inhabit; and was promiscuously applied to all places where there was a continuity of buildings. The learned Littleton however has divided places having a continuity of buildings into towns and boroughs, whereof the first, says he, want many privileges the others have; and among them that a borough may prescribe for many customs that a town cannot. Boroughs being a distinct and entire liberty may prescribe for customs within the extent of their own territories, whereas towns being parcel of a manor, which is one royalty, cannot prescribe for customs, because the orders made at the Manor Court, bind not only the town but the whole Manor.

The method of making a borough according to the more limited sense given to it by Littleton, appears to have been thus. When any place (whether the land was parcel of the king's or any of the peers' manors) was inhabited by tradesmen, and the land where such persons dwelt was let by lord or king to the inhabitants in fee farm or serjeanty, and all other duties and services released, than by the extinguishment of the mesne in case the lands were held of some lord; or if of the king, by severing it from the seigniority of which it was parcel; the inhabitants having no superior but the great community of the king and parliament to whom thereby their fealty and homage was only due .

the Wards, and for all local purposes, until in after days a special city freedom became established, simple habitation within the district conferred to every frankpledge all the privileges to be enjoyed; and while it gave the enfranchisement of its sanctuary, demanded in return a reciprocal contribution to the social state.

"It is not clearly shewn," says Mr. Schultes, "by any records, that a native*

Within these boroughs the community of burgesses exercised the same prerogatives and powers that the Earl or baron did in the Earldom or barony, and were lords of the Manor or district of land that composed it, exercising, with the concurrence of the suitors, not only a judicial but a legislative power. Their laws were called By Laws from the Gothic *By-Lagen*, which may be rendered borough laws.—*St. Armand, Hist. Essay*, xciii.

* The advocates of our original free agency have softened down the terms *Rustici* and *Nativi* to the modern ideas which they now represent; whereas those terms seem to have been employed plurally, as a general term, to include both sexes in bondage,—*villeins* and *neifs*, who were sold or assigned even to a later period than the aforesaid may find to accord with their hypothesis (*vide p. xxxvii n.*)

In the 16th of Henry II, Herbert the Smith was amerced for falsely claiming to be a *freeman*, whereas he was *only rusticus*:—*Herbertus Faber debet j. marcam pro falso clamore quem fecit ut Liber cum sit Rusticus.*—*Mag. Rot. 16 H. II. Rot. 10 b. Linc.*—*Madox.*

The following remarkable *Deed of Gift* of a *Neif*, born the daughter of a *Native*, refers to a later period (the 13th

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resident within the city and pledgeworthy, was not a citizen entitled to all chartered and customary franchises by reason of citizenship, without formal admission ; or whether admission was necessary for any other purpose than carrying on trade or business."† The question might be decided without reference to records. There can be no doubt that by the

Edw. III.), though examples might readily be found, without doubt, of a still more recent date (*vide p. xl. n.*) :—

Sciunt quod Ego, Radulphus de C., Miles, Dominus de L., Dedi Domino Roberto de D. Beatricem filiam Will. H. de L. quondam *Nativam meam*, cum tota sequela sua et omnibus catallis suis perquisitis et perquirendis ; Habend. et Tenend. prædictam Beatricem cum tota sequela sua, et omnibus catallis suis, et omnibus rebus suis perquisitis et perquirendis, prædicto Domino Roberto vel suis assignatis, libere, quiete, bene et in pace imperpetuum, &c. In cujus, &c., hiis Testibus. Dat. apud L. in die Sancti Laurentii Martyris, anno 13 Edw. III.—*Jacob*.

Upon the principle laid down in the City books (*vide p. xxxviii, n.*), a *Native* (as the term was at that day understood and applied) could not be a resident within the city, because the refuge of the locality would have emancipated him : neither could he, a Native, have been pledgeworthy, either within the city or elsewhere, because the character of the *free*-pledge was a rank to which he was nowhere admissible : consequently, if it be agreed that a citizen, before special freedoms were instituted, was no other than a frankpledge, a *Native* was of a condition equally distinct from, and inconsistent with, the quality of either.

† Enquiry into the Elective Franchise, p. 20.

original constitution of city customs, a frankpledge enjoyed all the privileges of the society of which he had been admitted a member;—there could be no bar to his accumulation of property by the trade of the locality or other laudable industry: but—

“ A change came o’er the spirit of the dream ;”

the citizen of that early period was not the citizen of after-days, when, to protect our trade from the ruinous competition of foreigners, at our own doors* (an example worthy to be thought of at the present day), a special freedom became established as a protection of that trade, by creating a monopoly of participators, otherwise entitled than merely by habitation—then the simple admission by frankpledge, while it was still essential for the inhabitant to entitle him to residence and the right of personal protection—no longer entitled him to trade; admission into the freedom of the incorporated Merchant Guild,† which is sufficiently well known as

* In 1552, the celebrated Company of the Hanseatic Merchants of the Steel-yard were dissolved, they having engrossed almost the whole trade of the kingdom. In the preceding year, they had exported 40,000 pieces of cloth, while all the English merchants together had not exported 1,100 pieces.—*Noorthouck*.

† *Gildarum nomine continetur non solum minores fraternitates et sodalitia, sed ipsæ etiam civitatum communi-*

the city freedom, alone conferring that exclusive privilege.

The position of reciprocal obligation as regarded the ancient inhabitant of the Wards of London, is thus described by the same author; with an attempted analogy to the special trading freedom; but his observations are ap-

tates.—*Spelm.* The city of London is a market overt every day excepting sundays and holidays, in which its freemen have an exclusive privilege of trade; that is to say, one of the contracting parties to every transaction must be a freeman (5 *Rep.* 85. *Skinner's Rep.* 55). This exclusion existed by the express grant or confirmation of several early charters, particularly 1 Edw. II, 1 Rich. II, 2 Hen. IV, &c., with an exception only, by chart. 1 Rich. II, in favour of the merchants of the King's foreign province of Aquitaine—an exception which only strengthens the evidence of the exclusiveness of the citizens as against all others. It is related (anno 1339) that the Lord Mayor for the time being, enjoyed a contribution of 50 marcs yearly, towards the support of the mayoralty, from the foreign merchants trading in and about the city. *This was a tax, levied upon them for the privilege of trading*, under letters patent of Edw. III, given at Westminster the 28th March, in the 11th year of his reign (*Anderson*). Here is at once seen the privilege and the purchase of it, as distinct from the free rights of a citizen. Mr. Norton, although he admits the "trading character of the corporation of London" to have arisen from "the many peculiarly commercial privileges granted to the citizens by charters" (*Com. on London*, p. 139), yet elsewhere, as though he were pleading "by the card" specially against her immunities, he observes: "There is no trace of any mercantile incorporation of London, nor of its having been

plicable to the original condition of the frank-pledge by simple emancipation, and to *none other*.

"A Citizen originally, before special freedoms were invented," says Mr. Schultes, signified an inhabitant or resident within the jurisdiction of the city, capable of becoming free pledge for another, performing general

a general mercantile gild; though gilds both mercantile and territorial, were common enough within it; and yet this city is universally considered one of the oldest in England" (*Ibid.*, p. 34). And again; "that although all the corporate towns in England almost have had a specific and merchant gilds granted them, yet the citizens of London *never have*, although gilds have been common enough, as well as a gild-hall for the assembly of the gilds" (*Ibid.*, p. 78). The latter observations, however, are not wholly inconsistent with the former; and as it cannot be denied that the citizens of London have had the most ample exclusions to be enjoyed by an incorporated Merchant Gild, without, perhaps, any original and entire express grant by name, it may be agreed, to have been more dignified, in an "ancient city by prescription"—to claim the original privilege by the same tenure, and to take occasional grants by charter, as recognitions and confirmations of an assumed pre-existing right. At any rate, the city of London was a merchant gild, by the terms of the charter of Edward II.

"Gildated and incorporated (says Mr. Madox) were of the same import. Sometimes the communia of a town was denominated a gild" (*Firm. Burgi*, p. 27). Thus, the incorporated city was a merchant gild; and, upon the same principle, the gildated fraternities became corporations.

duties, and contributing by personal service or pecuniary composition, (which is the meaning of bearing lot and paying scot) to the defence and aid of the city ; consequently a serf or bondman not being in the condition of a free agent, and any other person disqualified from being a freepledge, could no more be considered as a citizen or member of a city, than he could be deemed a decennier or member of a friborg ; and as a man ceased to be a decennier when he ceased to reside within a decenna or tithing, and to perform his local duties, so a citizen virtually incurred a forfeiture of his rights of citizenship by removal from his city, and thereby incapacitating himself from performing his civic obligations ; which construction is founded on a principle of retributive justice and obvious necessity.”*

The errors of this argument are readily seen, in a theory without facts, and results inconsequentially deduced. In the first place, the original principle of the enfranchised locality was, that *all were free*—the refuge of the walls gave sanctuary to the serf and freedom ; and in this respect, walled towns differed in the quality of their inhabitants from the

* Enquiry into the Elective Franchise, p. 26.

divisions of the rural districts, which necessarily consisting of freemen and serfs, the former only were accounted of the population.* It is not denied that freemen might, if they thought proper, go into voluntary servitude; and there are instances of their doing so for terms of years in discharge of other engagements; but within the city *all were free*; and every man of the age of twelve years was bound to be in one frankpledge or the other. Indeed by the original compact of the law of frankpledge,—which, in its origin, was merely a regulation of strict police,—no free man could avoid the enrolment: he was bound to be in one frankpledge or another, or he might be killed, and no one might question the deed; he could not quit one decenna or tything without entering into the same obligations with the next; and if he did not quit

* Domesday Book affords ample and painful testimony of the possessions which man held in humankind. The *Servi* were of four kinds, viz. those who sold themselves; debtors who were sold in discharge of their debts; captives in war; and the *Nativi*, or *servi by birth* and descent, the sole property of the lord—always accounted, with the cattle a part of the stock upon the land: these had their persons, children and goods, at the disposal of their lord, without any power of bequest or donation whatever. The *Servi Testamentales* were those who submitted by covenant.—*Leg. Æthelst.*; vide *antè*, p. lxii, n. See also *Heywood on the ranks of the people*.

with a fair reputation, he might not be received elsewhere without especial sureties for his good conduct.* What analogy therefore is there between this regulated administration of police, with which personal emancipation was associated only, because the population yet in bondage was not estimated of the honorary rank of man,—and the freedom of the merchant guild, which further conveyed the exclusive privilege of trade?

“The rights of men,” continues the same author, “associated together under any name or denomination, were always inseparably connected with some performance of duty;

* More recently the offence was punished by a fine upon the district. Amerced—the hundred of Peckham, for wittingly suffering a man to abide amongst them *sine franco plegio* (*Mag. Rot. 7 R. I, Kent.*); and the town (*Villata*) of Brumshell *pro receptione Nicolai filij Walteri sine tethinga* (*Ib. Rot. 19 b. Staff.*)

The obligation of the institution of frankpledge is further made manifest, as a police regulation, by amerciaments for harbouring, or concealing the escape of, offenders:

The aldermanry of Ralph Sperling (in London) amerced in xls., *pro receptamento Martini de Maydenestan fugitivi*.—*Mag. Rot.*, 33 Hen. III.

Francplegium Henrici Molendinarij amerced in half a marc, *pro fuga Galfridi Beche*; *Francplegium Willelmi Priuget* amerced in half a marc, *pro fuga Galfridi Pargmentarij*; *Francplegium Serlonis Francolignee* amerced in half a marc *pro Willelmo filio Turolidi*.—*Mag. Rot.* 5 R. 1.

therefore when a man entered into religion and abandoned the world, and thereby incapacitated himself from performing secular duties, he was considered in law as dead and having no civil existence, for *causa cessante effectus cessat*.* By parity of reason, when a man removed from a particular community wherein he enjoyed certain franchises in respect of his inhabitancy and the pledge or obligation he was supposed to have entered into to render aid and protection to his associates, he became useless to that community, and necessarily incurred a forfeiture of his legal privileges."†

Correct as far as it goes, upon a general principle of equivalent premises, the parity is incomplete. If the frank pledge lost the protection of his associates by ceasing to be gildable to their common charges and liabilities

* The maxim is "flat and unprofitable" as here applied, and had become an obsolete anomaly in the time of *Shakspeare*:

" ——— the times have been,
That, when the brains were out, the man would die,
 And there an end ——— "

Macbeth, act iii, sc. 4.

Be it remembered the monastic habit did not prevent the Prior of the Holy Trinity taking upon himself the secular duties of alderman.

† Enquiry into the Elective Franchise, p. 26.

by removal from their district, he took the same position he had resigned, and renewed his obligation in respect of all the franchises appertaining to his inhabitancy, with the next society of which he became a freepledge. The religionist did the same—but he did more; he changed the character of his position as regarded the political state—he abandoned perhaps the world by his private vow; but he did not abandon his moral status as a human creature entitled to the protection of the law of the political state under which his seclusion had toleration or sufferance; neither did the law of the country abandon him; he did not, by devoting himself to a sacred calling which afforded a recognised exemption from secular duties, release himself from his negative obligation to society at large; nor by consequence of such exemption, become an outlaw or *freondles man*.* Neither once *law worthy*,† could the frankpledge lose the benefit of his redemption and *revert* to slavery but

* He was indeed an outlaw, who expelled from the king's protection, was after certain days, denied all help of friends; *nam forisfecit amicos* (Bract., l. 3). *Freondswite* was the mulct exacted of him who harboured his outlawed friend. *Fleta*, lib. 1. c. 47.

† And I graunt you that I wyll that ye be all your law worth that ye were in Edwardis days the king.—1 *Chart. Will. I.*

by his own particular act; he could not by changing the locality of his secular obligations, become "dead in law:"—that could only *recur* to him as the result of crimes committed against the king's peace and the social compact which he had sworn to observe. Theoretical therefore as are the premises in reference to the originally redeemed frankpledge, still less are they applicable to that special freedom of the City of London, founded upon an exclusive privilege of trade—personal and not local in respect of many of its immunities;*

* By several of the early Charters, the Citizens of London are declared to be "toll free throughout England" i. e. exempted from toll for their goods and merchandises at all other marts; and by a later grant they are free of the city of Derry or Londonderry. In a pleading on the customs of London, Fleetwood, Recorder, held that a freeman of London may take an apprentice at York, and such apprentice shall be a freeman of London; but a citizen is such a freeman as inhabits in the city of London. *Moor*, 135-6. This unlimited power of transmission of the freedom would speedily have made the whole nation freemen of London: it was therefore ruled in *Burton and Palmer* (2 *Bulst.* 191) that to entitle A, the apprentice of B, to the freedom, it ought to be laid in the declaration that B, being a Citizen and freeman of London (*Civis et liber homo*) and not, a freeman of London, &c.; and for this cause judgment was reversed.

It is however sufficient to shew that the city freedom was not only local, but personal and locomotive. Thus—"the custom of London shall be preferred to the custom of the province of York, and notwithstanding the custom

and which classed the mere frankpledge as a "foreigner" or non freeman, unqualified alike to partake of its facilities for trade, and unentitled to the benefit of its Chartered exemptions. Thus there was no analogy between of the province of York, the heir by the custom of London shall come in for a share of the personal estate; for the custom of the province of York is only local and circumscribed to a certain place; but that of London follows the person though never so remote from the city." 2 Vern. Rep. 82.

In pursuit of his theory, Mr. Schultes, in his "*Enquiry into the Elective Franchise, &c.*" raises a very reasonable theory, which he forthwith controverts by the authorities he quotes in support of it. Thus in the first place he argues that actual residence was absolutely necessary to constitute a citizen of London under the City Charters, and that non residence occasioned disfranchisement. "The name of Citizens and burgesses," says he, "were so called in respect of residence:" and to prove the derivation of those terms as evidence of the fact, quotes the Mirror (c. 2. s. 28) "*Villeins sont cultivateurs de fief, demourants en villages uplande, car de vill est dit villein, de bourg bourgeois, et de citie citizens.*"

"All the privileges which the citizens enjoyed were confirmed or granted to them universally as citizens. When therefore in conformity with new regulations, it became incumbent on individuals desirous of partaking of such privileges, first to qualify themselves for that purpose by admission to their freedom, it was also necessary that they should be residents; and as, according to the Mirror, a man was called a citizen in respect of residence within a city, it consequently followed that a freeman would not be entitled to the rights of citizenship without actual residence" (p. 30.) On the contrary, the appended authority

the incorporated city freedom and the admission into the freepledge of its district governments.

With the special city freedom therefore arose a distinction in the quality of the frankpledges of the Wards, for while every inhabitant was liable and contributory to the Leet services of the district, none but men free

for this argument, not only shews that citizenship was otherwise to be acquired ; but also that the residence required to constitute habitation, was *then* understood to be the trading liability to Scot and Lot, which did not necessarily infer actual habitation, though it did imply a *trading residence* within the liberties. The cited extract from the *Year Book* explains that : "*Chescun que ad terre en mesme la citie est citizen. Ceux que sont nes et inheritable en mesme la citie pur descent de heritage, ou que resiants et taxable a Scot et Lot.*" (lib. 38.) And this explanation is agreeable to the terms "*terres tenants que meoblers*" elsewhere applied to the Commons of London.

A petition, of the 46th Edw. III, from the Citizens of the City of London to "our lord the king and his noble Council" set forth, "that they have nothing to live upon but their industry and *franchise, upon which franchise the said city was founded*, and by reason of which franchise they were wont to travel by land and by sea in divers Countries for their profit. By which travel they used to bring divers Merchandizes to the great common profit of the whole realm of England, to the great aid and maintenance of the said City, &c.; wherefore they pray that the king would please to have regard and take notice, *the said city was founded upon the said franchises*, without which they could not maintain the said city, nor bear the taxes and other charges they were wont to do."

of the city, in its incorporated and trading quality, were eligible to the rights of representation in its special government. Hence arose the necessity of the rule laid down in the earliest memoranda of the practice at Wardmote elections, which required that the beadle should prepare two lists of the people of the Ward, one of the freemen by themselves, and the other of the non-freemen by themselves; so that while all were subject to the jurisdiction of the local court, and liable to perform suit and service as inhabitants, the former only were invested with the city franchise of electing representatives in its general local government.*

* A Wardmote is described by Dr. Wilkins, to be—
"Conventus incolarum unius pluriumve Civitatis Regionum, quas vulgò Wardas dicimus, de quo plura apud Doctiss. equitem in voce Gemotum. Gloss. p. 432.
 It is the assembly of *all the people* of the Ward, summoned to meet together in the presence of the Alderman or his deputy as their head, to reform what is amiss, to remove nuisances, and to promote the good of the Ward. Once in the year at least, twice or oftener, the Aldermen hold their Courts, by virtue of Warrants from the Mayor for the time being, to them directed. The manner of holding a Wardmote in London used to be thus. The Alderman upon the receipt of his Warrant made out his precept to the Beadle requiring him to summon all the housekeepers and hired servants (*servientes mercenar'*) of the Ward to appear before him upon a certain day and hour, in a place certain within the Ward, to hold their Wardmote. After

The right of electing Ward or Leet officers (*Beadle, Constable, Inquestmen, Scavengers, Aleconners*, and the like) was of the nature of a burgage tenure, annexed to the occupation of the house to which the right appertained;* but the appointment of Aldermen (when

the Beadle had summoned them he wrote their names on a Roll, viz. *the Names of the Freemen of the City* residents within the Ward by themselves, and of the hired servants (*samulorum mercenar'*) who were not free, by themselves. And at the Wardmote, all those who were not free of the city, and who had not been sworn there, were required to be placed in one frankpledge or the other (notwithstanding that they had been received into Frankpledge elsewhere in other Wards) and were required to take the oath customary upon admission into frankpledge. And every one so received into frankpledge was required to pay a penny to the Clerk for his entrance; and if any such absented themselves from the Wardmote they were to be amerced in fourpence at the Court to the Alderman, excepting only knights, esquires, women, apprentices of the law, Clerks, or some other *who had no abiding city nor habitation there.* (*Lib. Alb.—de tenend. Wardm.*) In other chapters of the book the uses of the separate lists of the inhabitants in frankpledge are defined to be, that by the former only (i. e. the freemen of the city) were the elections of Alderman and Common Councilmen to be made; while the whole were liable to attend the general Leet services of the Ward.

* Anciently a dwelling house in a Borough town was called a *Burgage*: *Sciunt quod Ego, Editha, &c. dedi . . . in liberam, puram et perpetuam Eleemosynam, totum illud Burgagium cum Edificiis et pertin. suis quod*

the office reverted to election) and of Common Councilmen, were in the citizens or those who were of the special city freedom.

Little attempt has been made by any regular deduction, to identify the Saxon gildated localities (the frithgilds of the time of Æthelstan) with the wards of London under the Norman royal dynasty; nor is it a subject which the historians of London have embraced as a matter clearly to be defined. Even the most able of Commentators on London matters, seems to have been confused by the general use to which the Saxon term *gild* was by that people applied; and to have supposed that some of our early district city governments, and Bridge Ward in particular, were among the gilds amerced by Henry II. Mr. Norton says, "in the 26th Henry II, *districts called gilds* were still existing in London; for at that period many gilds,—some being of a commercial nature, *but most of them territorial*,—were amerced for being adulterine, or constituted without the King's authority, *over all of which aldermen presided*.* *Bridge Gild is mentioned by name*; and it cannot be found that aldermen ever presided over mercantile gilds

jacet in Villa Leominst. *Ex. lib. chart. Priorat. Leom.*
Hence *Burglary*, to break and enter a house.

* "Madox, *Hist. Exch.*, p. 562."

in London, except in those few instances recorded as of adulterine origin." * He further proceeds to add, that none of the adulterine gilds were *termed* "merchant gilds;" † and that when the term wards was first used, they were not called by their district names, but as the ward of such an alderman, *in the same way as the gilds were denominated.* ‡

* Com. on London, p. 78. Vide p. lxxxv, where the contrary is shewn.

† "Another proof that gilds were not all originally mercantile, may be inferred from the circumstance that, in ancient records, the gilds which are so are termed "merchant gilds" (*Gilda et Hansa Mercatorum*)—*Com. on Lond.*, p. 78. The fact is not borne out by the adulterine gilds, some of which Mr. Norton says were of a "commercial nature," yet not so distinguished.

‡ Com. on London., p. 79. The parallel is only borne out by the circumstance, that in both cases an alderman is mentioned—in the one, as the superior or president, and, in the other, as the proprietor of the soke; still, however, a distinction is clearly to be drawn, for while, in the record of the 26 Hen. II (anno 1179-80): "*Amerciamenta de Gildis Adulterinis in Civitate*," the form of each entry is, "*Gilda* —, unde — est Aldermannus,"—the Exchequer record of the assessment of Tallage on the known district governments, 11 Hen. III (anno 1226), under the general head, "*Tallagium Wardarum Londoniæ, quod colligit per Aldermannos subscriptos*," the entries are, "— debet — de Tallagio de *Warda sua*;" which may be held either to refer to a proprietary title, or to the alderman as the King's collector, in the character of bailiff of the franchise.—Vide *antè*, p. lv n. (*); *et post*, p. lxxix n.

The object of this argument seems an essay at the connexion abovementioned, namely, an identification of the district gilds with the known local aldermanries or wards,—but with what effect? If the Saxon frithgilds had still been preserved by name, they, nor any of them, could hardly have been included in the amerciament of Henry II, as “constituted without the King’s authority”—when, if then existing, they had been guaranteed at the Conquest, among other institutions, and confirmed by his predecessor and himself; but while there is every reason to believe that the term gild had been superseded, as applicable to a district government, the latter was quite distinct in character and in description, partaking of the nature of a soke, with the circumstances of its particular government comprised, granted, and described by the terms “sac and soc;” whereas the immunities of associated gilds, secular or religious, still preserved their original name:* and while both

* Besides the London adulterine gilds, many others are mentioned as in *misericordia* for the same offence:

The Burgesses of Totness, amerced in v marcas, *pro gilda sine waranto*.—*Mag. Rot.*, 26 Hen. II.

Ralf Dives, of Lidford, amerced in v marcas, *pro gilda sine waranto in eadem ville*.—*Ibid.*

The Burgesses of Bodmin amerced in C. s., *pro gilda sua sine waranto*.—*Ibid.*

may be said to have been *gilds* in the spirit of the term, solely from the circumstance of individual contribution to a common fund, the purposes of each were wholly different, the one being of the nature of a fraternity, partaking of objects of their private weal—and the

Alwin the mercer, amerced *pro communia*, for settling up a community in the burgh of Gloucester (*Mag. Rot.*, 16 *Hen.* II); and Henry Hund, and the rest of the men of that town, for the same.—*Ibid.*

In all these entries, the term *gild* appears of the same import, and in one of them (agreeing with the statement of Mr. Madox, *ante*, p. lxxv, n.), *communias* seems to represent a consimilarity of character. In the case of the ferm of a merchant gild, the record of the account is also of the same form :

Telarii Londoniæ debent v marcas et dimidiam auri, *pro gilda sua* de ij annis.—*Mag. Rot.*, 6 *Hen.* II.

Bolengarii debent ij marcas auri et vj uncias, *pro gilda sua*.—*Ib.*

On the contrary, in reference to known localities, the entries are numerous of fines paid, *pro saca et soca*, for the manorial rights of jurisdiction (*Madox, Hist. Exch., passim*), corresponding with the government of the early city wards; and at a later period the *View of Frankpledge* (a principal feature of the original gildated districts), as still representing the jurisdictional right, was frequently the subject of question: Quo Waranto — clamat et tenet Visum Franci Plegii in Manerio — (*Mem. Rot., temp. Hen. VIII.*) The course of procedure in the two cases seems sufficiently distinct, to mark the character of a gild of voluntary and discriminate members, associated for their own private advantage, from the government of a soke, compulsory upon its inhabitants.

territorial having for its end, the preservation of the public peace, the right of local jurisdiction, and the common protection of the district.

In quoting the erudite Maddox as an authority, Mr. Norton has adopted a generality which is by no means clear, nor borne out by the terms of the cited record. In the *Firma Burgi* it is true that, in reference to the government of Aldermen, it is said "they are first mentioned in the reign of Henry II, as presiding over gilds—some *territorial*, others *mercantile*;"* but without other authority than the record printed in his valuable history of the Exchequer, few subjects appear more clear than that all the gilds amerced as adulterine and mentioned in the record of the 26th of Henry II, were mercantile and religious institutions,† or other associations than, and *not* any of those district gilds, identical with the Saxon sokes, and afterwards known as aldermanries and wards. Mr. Norton's argu-

* P. 26.

† Gilda Aurifabrorum (Goldsmiths); Gilda Bocheiorum (Butchers); Gilda Piperariorum (Pepperers); Gilda Pegrinonum (Strangers), &c;—these were evidently mercantile or trading gilds. The following, viz. Gilda de Holwell—Gilda de Sancta Lazario, were probably dedicated to religious services.

ment would conclude that because the Presidents of those Gilds are styled aldermen, such gilds must by consequence have been *aldermanries*,—thence districts, and as a probable consequence, *the* districts called Wards. If *Gilda de Ponte* is to be rendered by a double translation, *Bridge Gild*, and thence *Bridge Ward*, to invest it with the identity of that known locality, then in the 26th of Henry II, there were *four* Bridge Wards existing at the same time, under the rule of so many different persons styled aldermen—for so many amerced gilds denominated “*de Ponte*” are included in the same record quoted by Mr. Madox.* Indeed in the *Fir-*

- * *Gilda de Ponte, unde Thomas Cocus est Aldermannus.*
Gilda de Ponte, unde Alwinus Finke est Aldermannus.
Gilda de Ponte, unde Robertus de Bosco est Aldermannus.

Gilda de Ponte, unde Petrus filius Alanii fuit Aldermannus.
Mag. Rot. 26 H. II.

It is probable, the untitled associations derived their general name, “*de Ponte*,” from the place where their hall was situated, being distinguished by the name of their superior.

The whole amercement on the Adulterine Gilds amounted to “*C et xx l., de Misericordia—quia constitutæ fuerunt sine Waranto.*” The same amount is mentioned as being unpaid in the 27th, 29th, 32nd and 33rd Hen. II; and again in the 1st, and in the 2nd Rich. I. Indeed it remained yet unsatisfied at the expiration of twenty-nine

ma Burgi, although no explanation is afforded, he does not fail to notice the fact, which

years, and the amount then seems to have become a common charge upon the city: "*Cives Londoniæ debent D et Lxxl. et xv s. et jd. de pluribus debitis sicut continentur in Rotulo præcedente; de quibus C et xxl. debent exigi de Misericordia Gildarum Adulterinarum sicut continentur* [in Rot.] xxvj Regis Henrici. *Mag. Rot.* 10 Joh.

As no instance of such a transition of responsibility occurs in respect of a tallage or amerclament on a known locality, it is fair to infer, if the *Misericordia* of the Adulterine gilds also applied in part to district governments, that it would so have remained a charge upon them, recoverable by the usual process issued against the Alderman or bailliff of the franchise or his representatives. Thus, in the 2nd Edw. II, a Writ of *Distringas* issued out of the Exchequer against "Nicholaum de Farndon, aldermannum Wardæ de Farndon, Thomam de Kent, executorem testamenti Johannis de Cantuaria quondam Aldermanni Wardæ Turris, Robertum de Armenteres et Johannem Tedmar, executores testamenti Johannis Darmenteres, quondam Aldermanni Wardæ de Langebourn, Richerum de Rofham Aldermannum Wardæ de Bassleshawe, Johannem le Blount Aldermannum Wardæ de Bred Strete," whom the Sheriff were commanded to produce in the Exchequer on the octave of St. Michael, to render an account of Tallage assessed upon their respective districts, and due to the late king.—*Rot. Mem.* 124.

On the contrary to this practice, in the case of the ferm of a Merchant Gild, the king seems to have taken his arrear, not from the ruling power (whether Master, Warden, Alderman or otherwise denominated) but where he could get it from among the members. In the 7th Edw. IV. a writ of *Fieri facias* issued to the Sheriffs of London, to levy three hundred and fourscore marcs, the arrear of

must be fatal to the inference Mr. Norton suggests when he says "Bridge Gild is mentioned by name."

the ferm of the gild of Weavers. Upon this, Smyth and Heriot, Sheriffs, levied the same upon the goods of Guy de Asshewilder, John Gysell, Henry Clerk and Lamb. Cromme, who pleaded that they were foreigners and not members of the London Gild; but the king's Attorney, Henry Setchell, demurred to the plea of exemption, for that they practised weaving in London; and by the result, it appears to have been ruled, that if they did not belong to the gild they ought to have been members of it. So also, in the case of Queen Gold due from the incorporated (Merchant Gild of the) City, in the 38th Hen. III, the Sheriffs were commanded by Writ out of the Exchequer, to distrain the *Communia* of the City: "*distringant Communiam Civitatis Londonia.*" *Hist. Exch.* p. 241. What return was made does not appear, but in the following year the Sheriffs were commanded, by Writ out of the Exchequer, to distrain "*Cives Londonia*" for the said queen gold. To this the Sheriffs made a return that they had seized certain *Vadia* of the said Citizens, but no one would buy them. Whereupon they were ordered, on a day named, to bring the said *Vadia* before the Barons of the Exchequer. But the seizure seems somewhat to have resembled the "catching of a Tartar," for on that day the Sheriffs made report that certain Drapers, Spicers and other tradesmen would not suffer them to carry away the said *Vadia*.

The Sheriffs were thereupon committed to the custody of the Marshal of the Exchequer; but were afterwards mainprized by Michael Tony, Robert Hardell, Thomas Adrian and Simon de Cobham, *on behalf of the Community of the whole city.*—*Hist. Exch.* p. 698.

The result seems to afford a reasonable conclusion, that

It is not a consequence that because Aldermen are known to have governed local districts called Wards, that therefore every institution to which an Alderman is found to have been attached was therefore a district or Ward. The Saxon title of respect as connected with a positive governing authority, no doubt originated in the reverence awarded to, and the knowledge and wisdom associated with the idea of old age: in the sense of elder, superior and senior, the title of alderman became applicable to the presidency of any associated body;* and as senator it was also appropriate to the elected *Wita* representing *in gemotum* the district of his authority. But Mr. Norton urges further that "there is no

the adulterine gilds were associations of the Citizens, secular and religious (the individual members whereof did not appear), on whom generally, in default of particular satisfaction, the amercement became a common charge.

* To a comparatively recent period the title of Alderman has been employed in the purity of the Saxon original, as witness:—*Fraternitas sive Guilda vocata Fraternitas S. Spiritûs, infra Capellam juxta Basyngstoke, restaurat et ad pristinum statum reductum, de uno Aldermanno et duobus Gardianis et fratribus et sororibus Fraternitatis prædicti incorporatis et de Terris eis concessis. Originalia 3 & 4 Ph. & M., Rot. 6.* By the terms employed, it is clear that the title "Alderman" had been the original designation of the Superior of the Gild, and was revived, with the restored fraternity, at the temporary reinstitution of popery under queen Mary. The establishment, being

instance of an alderman presiding over a gild except in those recorded as Adulterine ”*—a circumstance which, if it were so, could only prove one, or perhaps both, of two positions opposed to his argument, viz. that the local districts, or *sokes*, were not then known by the term *gilds* ; or, that the authorities in charge of them had not then the title of Alderman. The latter, however, was not the case, and it is unfortunate that so positive an assertion should bespeak so great a deficiency of research, when a very slight enquiry will shew, that the title of Alderman was a common designation of the superior of gilds, both religious and secular,*—that other gilds than

partially devoted to education, escaped the “Reformation,” but fell beneath the parliamentary or puritanical Protectorate. It is remarkable that this institution has not been noticed by the Editors of the splendid new edition of the *Monasticon*, though mention of it is made in the *Britannia*, as also in *Warner's Hist. Hants*, and even in the *Beauties of England and Wales*.

* Besides the instance of the Fraternity of the Holy Ghost, previously quoted, a convention of an early date, between the gild of Saddlers of London and the Canons of St. Martin (by which the saddlers were admitted into brotherhood, and partnership of masses, orisons and good deeds, with the canons), was directed “To the *Alderman*, Chaplain, Eschevins and elders” of the said gild: *Conventus Ecclesiæ Sci Martini Londoniæ, N. Aldremano, et N. Capellano, et N. quatuor Schivinis, et omnibus seni-*

those amerced as adulterine certainly were in existence,*—and that there is every reason to believe the frithgilds, or frithsokes, had then exchanged the Saxon for the Norman title, and were known as *wards*, though they had not yet received those permanent names by which they were afterwards distinctively described.

If the frithgilds of the trading city had the character of the rural hundreds, it is readily to be supposed that to the elected ruler of each, having a similarity of jurisdictional authority, a title would apply, also bearing a characteristical similitude; and it has already

oribus Gildæ Sellariorum, &c. (*Ex Aut. in Arch. S. Pet. Westm.*, n. 128, *ad temp. RRR. H. II, R. I, aut Joh. ; Firm. Burg.*, p. 27). Equally in point, and more particularly in reference to date, is a memorandum respecting the weavers of Winchester, who fined (de Gersuma) in one mark of gold to have their customs and liberties, and the election of the Alderman of their Gild: *Telarij Wintoniæ debent j. marcam auri, de Gersuma, pro consuetudinibus et libertatibus suis habendis, et pro eligendo Aldermanno suo.*—*Mag. Rot.*, 12 *Hen. II*, r. 8.

* The Gild of Weavers enjoyed privileges under Hen. I, as also there is reason to think many others did, at the same period (*Howel, Londinop.*) They paid an annual *ferm*, or tax, for the privilege of their incorporation, which amounted to a monopoly of the trade: the adulterine gilds defrauded the King of this revenue, and hence their crime and their *miser cordia*. Every act which interfered with the royal prerogative, and required the King's permission,

been observed,* that the *centenarius* of the county districts was, by the Saxons, styled "Aldermannus Hundredi;" so that there is no difficulty in arriving at the very natural conclusion, that when the Norman policy revived that of the Romans,† the districts *in guard*

done without that permission, was called adulterine; thus, certain castles built in the reign of Stephen, were termed "*adulterina et illegitima*," i. e. *constructa sine waranto*.

* Antè, p. lv, n.

† It is hardly to be imagined that London, so long under the politic and enlightened rule of the Romans, should not have received lasting impressions from the Empire of which it was the colony; indeed it is known particularly, that the magnificence of the Augustan age extended its influence, greatly to the improvement of our infant city. So, also, was its internal government modelled upon Roman principles; and, with little doubt, the more minute details were derived from the same source—transmitted by custom to later times, recognized and adopted by subsequent governments, or modified to suit the particular objects of the day. The Wards of London may thus find their original, also, in its far-famed prototype. In explaining the word *Senior* (a literal translation of the Saxon *Ælðorman*), Sir Thomas Craig has it thus: "*Senior, i. e. Dominus Ealdorman, Baro caput Tribuum*" (*De Feudis*, 36); and Tribuum,—*partibus, in quas ager Romanus primò divisus erat* (*Var.*) The Roman Ward consisted of a tribe or band of *one hundred*, of which the city, originally of three only, ultimately extended to thirty-five.

Here is at once a consimilar model for the town warded districts, and the centenary character which the government of them resembled. It may not be out of place to add, that although the subdivisions of the country are at-

of the local elder received the designation of *Wards*; and thence were the governing authorities styled "*Aldermannus Wardæ*," or

tributed to the act of our Saxon Alfred, he was rather the introducer than the inventor of that complete system of provincial subjection.

Of the traduction of the Saxon title, "the rank of men," says M. St. Amand (*Hist. Essay*, p. xiii), "whom Tacitus styles princes, by a word common enough in the German laws are called *Graves*, which signifies no more than judges (*Gro. de A. Rep.* 62). Of the same import is the old Saxon word *Gerefa*, which, in the laws of the Confessor, is reduced to *Grève*—thence indifferently *Grave*; and by the Normans, by a nearer conformity to the sound, the same officer is found under the well-known appellation of *Reve*.

"As the judicial title was derived from the office, so, as among an illiterate people wisdom can only be acquired by experience, those officers were commonly, though not always, old men; and, from their age, received another appellation here in England, in the first ages of the Saxon government being called *Ealdermen*, which, literally translated, signifies *Eldermen*" (*Fortescue on Fort. of Monarchy*, p. 62). But Dr. Wilkins, with an eye prospectively defensive of the juvenile members of our city bench, and in terms that will give confidence to our aspiring youth in affecting the Purple (*quasi* Turtle), repudiates the consequence of sapiential senescence: "*Greve*," says the learned Doctor, "*qui super alios præfecturas habent, ita apud Anglos antiquitus vocabuntur Ealdormen, quasi seniores, non propter senectutem cum quidem adolescentessent, sed propter sapientiam.*" And, in reference to the transition from the Roman officer, he continues: *Et similiter olim apud Britones temporibus Romanorum in regno isto Britannæ vocabantur Senatores qui postea*

in *Warda* (*Custodia*) of such a place ;*—terms of expression which seem referrible more particularly to an elective or nominated

temporibus Saxonum ut prædictum est vocabantur Aldermanni, non propter ætatem, sed propter sapientiam et dignitatem cum quidem adolescentes essent, jurisperiti tamen, et super hoc experti. Et ut verum fatear habent etiam Aldermanni in civitatibus regni, hujus in Ballivis suis, et in Burgis clausis, et muro vallatis, et in castellis eandem dignitatem et potestatem et modum, qualem habent præpositi hundredorum, et wapentachiorum in Ballivis suis sub vice-comite Regis per universum regnum. —*Gloss.*, p. 204.

The *Aldermannus totius Angliæ*, who, next in rank to an atheling, presided with the bishop at the scyremote, was superseded by the *capital justiciar*, whose duties had previously been performed by the former, under the particular distinction of *cyninges ealderman*, because specially appointed by the King to administer justice. The *aldermannus comitatus* gave way to the jurisdiction of the created earl, whose dignity in course of time becoming merely titular, his jurisdiction passed to the sheriff and the lord-lieutenant ; and, as before observed, the *aldermanni hundredorum* (hundroder ealderne—*Leg. Eadgari*, *Wilk.* 81) were the model of the officer governing the London Wards.

* *Wardæ—Vigiliæ, custodiæ* (*Wilk.*, 205). A law of the Confessor, providing for the internal peace of the kingdom, commences thus : “ Et ut *Wardæ* juste et rite observantur, &c.” (*Ibid.*) And the Conqueror, in confirming the laws of the Confessor, seems to refer to the *Aldermannus Hundredi* in the following injunctions : “ *De nocturnis custodiis*.—Statuimus et firmiter præcimus ut omnes Civitates et Burgi et Castella et *Hundreda*, Wapentachia totius regni nostri prædicti singulis noctibus vigilentur, et custodiantur in girum pro maleficis et

appointment; whilst other descriptive appellations appear to indicate the jurisdiction of a proprietary ruler, consistent with the manorial rights which appertained to the government of a soke* by the lord; and is, even

inimicis, prout vicecomites et Aldermanni, et Præpositi et cæteri Ballivi, et ministri nostri melius per commune concilium ad utilitatem regni providebunt.—LL. Gul. Cong., s. 56, Wilk.

In particular reference to the London districts, that terms synonymous with each other, applicable both to the title and quality of the jurisdiction, were at different times applied, is very certain. In the year 1227, the following entry occurs :

“ Will. fil. Benedicti *de Custodia Fori—Ll.*”
Tallagium Wardarum Lond., Mag. Rot.,
12 Hen. III.

In 1284, from the earliest notice in the city records:—

“ *Warda Fori or Foris, Steph. Aswy., Ald.*”
Lib. Alb., fo. 116.

with which settled term, the Exchequer records of the year 1312 are found to agree:—

“ Johannes le Blound quondam Aldermannus ~~in~~
Warda Fori.” *De Tallagio, Mag. Rot., 8 Edw. II.*

In the same character of expression, the *Stat. Civitatis Lond.* directs, “ Derichief p'veu est q' chescun Alderman, *en soen Gardemot* ententiveme't enquerge de tiel meffours repeirantz e demorantz *en sa Garde,*” &c.

Mag. Rot., Stat. (13 Edw. I), m. 42.

* The term *aldermanry*, as descriptive of the government of an alderman, appears to have prevailed at the time when many of those districts are known to have been proprietary, and transferrible by sale and purchase, upon

with an elected Alderman, the principle of the feudal compact, under which the local government of the Wards has been transmitted to our own day.

It however became a matter of doubt ; and opinions, supported by facts apparently irreconcilable with each other, have at times been advanced, as to the position of the ancient alderman over his government (gyld, soke, or ward). By the early Saxon institution, he appears to have been elected by the free tenants of the soke ; and when the office

the same principle that the term *sokemanry* was applied to a jurisdiction, varying from it but in the name.

Soc, or Soke, is mentioned as a liberty or franchise (*Chart. Cnut rex*), with the power to administer justice and execute laws : It also implies the territory wherein such power is exercised ; and is thus used as a seigniorship or lordship enfranchised by the King, with the liberty of holding a court of its sockmen. Thus *Pleta* : Soke significat libertatem curiæ tenentium quam socam appellamus (*lib. i, c. 47*). Socmen are such tenants as hold their lands and tenements in socage (*Britt., c. 66*). After the Conquest, the Socmanni, frequently mentioned in Domesday, were tenants who held by no servile tenure, but commonly paid their rent to the lord, as a soke, or sign of freedom, though they were sometimes obliged to customary duties for the service and honor of their lord (*Spelm. of Feuds, c. 7*) ; and this was called *liberum socagium* (*Bract., lib. ii, c. 35*), and *fraunke ferme* (*Britt., c. 66*) ; calling the tenants *Sokemans*, and the territory *Sokemanries*. C. J. Blackstone says—it seems probable that the socage tenures were the relics of Saxon liberty, retained

in after days reverted to election, the freemen, as rated householders (representatives of the Saxon electors), are again found in possession of the franchise. The proprietary jurisdiction, essentially feudal, which intermediately prevailed, had all the characteristics of an introduction by the Normans, did it not appear that the same circumstances also appertained to the later government of the Saxon districts, and that the charter of William I, recognizing and guaranteeing to the men of London their

by such persons as had neither forfeited them to the King, nor had been obliged to exchange their tenure for the more honorable, as it was called, but at the same time more burthensome, tenure of knight's service. This is peculiarly remarkable in the tenure which prevails in Kent, called *Gavelkind*, which is generally acknowledged to be a species of socage tenure, the preservation whereof inviolate from the innovation of the Norman conquerors, is a fact universally known; and *those who thus preserved their liberties, were said to hold in free and common socage.*—*Com., ch. vi, p. 81.*

As a connecting link between the soke and the frithgild, *Fleta* mentions *Frithsoke*, which, by his description, was identical with either, possessing *Libertas habendi Franci plegii seu immunitatis locus*; and *Frithmote*, the assembly of such a district, occurs in a record of the 14th *Hen. VII* (*Pl. in Itin. apud Cestr.*) Friburg and Frithburg were the relative names of an emancipated district in Freepledge, before and after the Norman conquest (*Bract., lib. iii*); and hence *Friling*, or *Fneohling*, a free man, as distinguished from the slave.

institutions previously existing, is adverse to a presumption, that any material innovation of them had at that time taken place,—especially in a particular of sub-rule, which so well accorded with the general policy of government then established; for, under other circumstances, the observance of charters on the one hand, as of laws on the other, was so much a matter of either convenience or compulsion, that the evidence of them as between monarch and people is of little dependence,—particularly when opposed to the fact, that many Norman institutions *were* introduced—with more or less advantage to the governed.

It is to be attributed to the absence of local records, that so little is positively known of the details of the government of London at the period of the Norman conquest; and “whether,” says a recent historian, “it at first was divided into wards by King Alfred (after his rebuilding the same), or by arbitrary lords, whose demesnes in the city were held in vassalage by the citizens or by others, is unknown; the latter, however, seems probable, from the fact that, during the Saxon government, most of the cities and towns in the kingdom were held in demesne, or vassalage; which is strongly corroborated, by the wards

of this city being anciently hereditary, and alienable at the will of the alderman."*

To suppose that the city was "divided into Wards by arbitrary lords," whose demesnes they were, is to imagine an assumption of arbitrary power, which at no known period of our history could have existed. To suppose that the hereditary aldermanries were held in demesne, or "vassalage," would be to question all the free exemptions from the base tenures, which have, throughout all known time, been claimed as an enviable attribute of the area encompassed by the walls of London: neither is it reasonable to suppose, that the quality of the district governments should have been more absolute than that which ruled the whole of the city; and Dr. Brady has supposed that the liberties recognized by the Conqueror in behalf of the Londoners, and claimed to have been enjoyed by them in the time of the Confessor, consisted mainly in the exemption from the servile condition of being *in Dominio*.† But these apparent inconsistencies may be reconciled by supposing the probable fact, that London, "from all time called the *free cham-*

* Allen, Hist. Lond.

† Treat. on Burghs; vide etiam, *antè*, p. lviii, n.

ber of the King,"* was, in the time of the Confessor, held freely of the King by charter, in *patrimonium Domini*, and thence styled *Ancient Demesne*†—a species of free tenure

* De Heretoch. & Libertat., Lond.; *ante*, p. xxxviii, n.

† Demesne (*Dominicum, Domanium*)—in ordinary speech, *Demains*, are the lord's chief manor place, with the lands thereto belonging, which he and his ancestors have, from time to time, kept in their own manual occupation: and all the parts of a manor, except what is in the hands of freeholders, are said to be demains (*Bract.*, l. iv; *Flota*, l. v). Demain, representing an inheritance, is derived from *Dominicum*, because a man has a more absolute dominion over that which he keeps in his hands, than that which he lets to his tenants.—*Blount*.

Ancient Demesne (*Vetus Patrimonium Domini*), is the tenure by which all the manors belonging to the Crown, in the days of St. Edward, and William, called the Conqueror, were held. The number and names of all manors, after a survey made of them, were written in the book of *Domesday*; and those which by that book appear to have at that time belonged to the Crown, and are contained under the title *Terra Regis*, are called *Ancient Demesne* (*Kitch.* 98). No lands are accounted *Ancient Demesne* but such as are held in *socage* (*Darw. Abr.*, 660); and *Fitzherbert* says, that tenants in ancient demesne, holding by tenure of service immediately for the support of the King's freehold, had liberties granted them (*F. N. B.* 14, 228). Of this tenure there were two sorts; the one holding their lands freely by charter—the other, by copy of court roll, according to the custom of the manor (*Britt.*, c. 66); the former of which had privileges peculiarly coincidental with those claimed for the early men of London, viz. the tenants holding by charter cannot be impleaded out of the manor; for if they are, they may abate the writ by plead-

not inconsistent with the liberties claimed to have been enjoyed by the men of London, but, on the contrary, embracing privileges identical with many of the immunities and exemptions secured to them by their early charters.

ing the tenure (*F. N. B.* 14): *they are free as to their persons* (1 *Salk.*, 57): and *they are free from toll* for all things bought and sold concerning their substance and husbandry.—*F. N. B.* 14.

Some few cities which had originally belonged to the King, either through royal indulgence, or by their own influence, succeeded in liberating the whole body of citizens from the vassalage incidental to the tenure in demesne; and some of them were also allowed to compromise, by a certain annual contribution, all dues, tolls, and other levies which the King, as lord of the demesne, had been used to collect and receive, but which *were afterwards levied by the citizens themselves* for the purpose of satisfying, out of them, the composition they had so made (*Millar*, p. 379). This annual rent was called the farm (*Sax. feopme, Victum, alimentum*), corresponding with the idea of a "tenure of service, immediately for the support of the King's freehold." As early in the Norman government as the reign of Henry I, this farm, in favour of some particular city, being estimated at a specific sum, and made perpetual, was denominated a *fee-farm*, and such cities were then said to be held of the King *in capite*, or in chief, at *fee-farm*. The King was then considered to have relinquished the property of the soil, *retaining nothing more than the mere seigniority* (*Madox, Firm. Burgi*, p. 15); and this seems to be the position of subjection to the Crown, in which the citizens of London still retain the right of self-government.

“ It is possible, indeed,” says Mr. Norton, “ that London had never been in vassalage, or under the *strict demesne* of the King, but had always asserted its own independence, and claimed to be governed by its own laws, in common with the free part of the national community. There are, however, certain indications of its having been held *in some sort of proprietorship*, even in the Saxon times; and it is not easy to account for such proprietorship at that period, on any other score than that of a *demesne* origin.” * To which may be added the observation of Mr. Madox,—that it was a frequent subject of dispute, during the reigns of the earlier Norman princes, *whether London was in demesne or not.*†

It is unfortunate for the clear elucidation of the subject, that the general deficiency of city records of this period also extends to the Domesday Survey, not any part of the volumes known to exist having reference to London; a circumstance which has generally induced to the conclusion, that the memoranda of the survey of the metropolitan city having been comprised in a volume by itself, and the more readily exposed to the casualties of mischance or design, in some early convulsion of

* Com. on Lond., p. 45.

† Hist. Exch., p. 712.

the State became separated from the other volumes, and lost.* All the circumstances, however, are favourable to the proposition, of which that volume, it is believed, might have afforded the proof; and the observation of Mr. Madox, that the question had been so early raised, may not have been without reference to the absence of the supposed record of the Conqueror's survey. Upon no other principle can the origin of the proprietary aldermanries be so readily accounted for, as a

* The Exchequer record of Domesday (*Liber Judicarius, vel Censualis Angliæ*) consists of two volumes; one, the larger of the two, containing a survey of all the lands in England, excepting the counties of *Northumberland, Cumberland, Westmoreland, Durham*, and part of *Lancashire*, which are said not to have been surveyed; and excepting also *Essex, Suffolk, and Norfolk*, which are comprehended in the lesser volume. Several other volumes under the same name are abridgements, and differ only in the form and arrangement of the matter contained in them. Our ancestors had many *Dome-Books*: King Alfred had a roll which he called Domesday; and the Domesday Book made by William I referred to the time of Edward the Confessor, as that of King Alfred did to the time of Ethelred. One of the abridgements of Domesday being much embellished with illuminated drawings, referring to the time of the Confessor, led to the error in the notes on Fitzherbert, that "*Liber Domesday factus fuit tempore Regis Edwardi*" (*Reg.*, p. 14). The Book of Domesday was begun by five justices, assigned for that purpose in each county, in the year 1081, and finished anno 1086.—*Jacob.*

grant from the Crown ; indeed, referring to the early history of the ward of Portsoken, Mr. Norton observes, that “the King gave Knightengild to the knights, or men of that district, and they, *being so liberated from demesne*, gave the gild to the prior and canons of the Holy Trinity at Aldgate.”* In like manner the privilege of self-government,—the Sheriffrick, Chamberlainship, &c., officers administering the King’s rights, have been

* Commentaries on London, p. 24. Portsoken, or the franchise at the gate, is identified as the district composing a gild in the days of King Edgar, and known as Cnihten gild, the tradition whereof is to be found in all the histories. It appears by the Saxon prince to have been granted in fee to thirteen knights, whose soke it thence became, and hence its name. The grant was confirmed by Edward the Confessor, and again by William I to the heirs of the original grantees, in the following terms :

“William, king of England, to Maurice, bishop, and Godfrey de Magnum and Richard de Parre, and to his faithful people of London, greeting : Know ye me to have granted to the men of Knighten gild the gild that belongeth to them, and the land that belongeth thereunto, with all customs, as they held the same in the time of King Edward and my father. Witness, Hugh del Buche at Rething.

Henry I granted another charter of confirmation, and in 1116, the 16th of the same reign, the representatives of the knights (who were called burgesses of London) were in possession, viz. Rad. Fitzalgot, Wilmarde de Dovershe, Orgare le Rude, Edw. Hup Cornehill, Blackolanus, and Alwine his kinsman, and Robert his brother, the sons of

obtained at sundry known times, by favoured concession or purchase from the Crown ; and the original subjection is still acknowledged, in the annual submission of the elected chief magistrate and sheriffs to the approbation of the royal will.

“ When,” says Mr. Madox, “ the King was seized of a city or town in demesne, he had a complete seizin of it, with all its parts. He was lord of the soil, and proprietor of the

Leafstanus the goldsmith, Wigo his son, Hugh Fitzoulgar, and Algare Secusme, who gave all the land and soke of Knightengild to the church and canons of the Holy Trinity within Aldgate, recently founded by the queen Matilda ; taking upon themselves the brotherhood, and participation of the benefits of the house.

The Prior and Canons being thus seised, *the Prior was, for himself and his successors, admitted as one of the Aldermen of London, to govern the same land and soke ;* and, according to the custom of the city, he sat in court, and rode with the mayor and his brethren, the aldermen, as one of them, in scarlet or other livery, as they used.

In 1284 Eustacius, the eighth prior, because he would not deal with temporal matters, instituted Theo. Fitz Iuonis, or Ivo, as deputy alderman of Portsoken Ward under him ; but his successors, priors of Christchurch, were successively sworn in alderman of the said ward, and continued to perform the secular duties thereof until the dissolution of religious houses, in 1531, the 23rd Hen. VIII, when, on the 4th of February, the priory was surrendered by Nicholas Hancock, prior, Geo. Grevil, and seventeen others of the monastery ; and from that time, Portsoken Ward has been governed by a temporal person.

profits, if any, of the aldermanries, perquisites of courts, issues, and appurtenances whatever. Sometimes the Crown thought proper to divide and grant some part of a city or town, or some profit or appurtenance thereof, to a private man or a religious house, by which means it became divided into a half or third, or other subdivision;* and these portions, so separated from their original subjection, became again alienable at the will of the grantee.† In reference to the city of London, it only remains for the casuist to determine in how far, if any, and in what particular, differs the previously stated position from a tenure of the King *in capite*, in *free burgage*, which has elsewhere been assumed as the holding of the citizens of London.‡

* *Firma Burgi*, p. 15. In this way, *two-third parts of the revenue of the city of Exeter* were granted by Maud, queen of Henry I, to "the Church of Christ, seated near the walls of London."

† In the reign of Edward I, the Abbot and Convent of St. Austin, Canterbury, granted the aldermanry of Westgate to Nicholas Doge, at the yearly rent of *xl. sterling*. The Crown was anciently seized of the city of Canterbury in *demeane*, and probably this aldermanry was severed from the rest of the city, by virtue of some ancient grant made by the Crown to the Abbey of St. Austin.—*Thorne, inter decem Script.*, 1926.

‡ By an inquisition of the 37th Edw. III, certain lands, rents and tenements in London, "lately purchased by

If the city records be appealed to, as authority for the division of the city into wards, it is, in *Liber Albus*, assigned to the year 1285—a date which will apply only to a reformation in their local and representative government. According to Fitzstephen, who was himself a citizen, and wrote in the reign of Henry II, the city was then divided into districts, and, as it seems probable, into those known as wards, though not then distin-

Michael de Northburgh, late bishop of London, to him and his heirs," were found to be holden of the King *in capite*, in *free burgage*, like as the whole city of London is holden (*Pat. 37 Edw. III, p. 2*). The tenants in *free socage* of the counties, and the burgers, or tenants in free burgage, were of the same quality; for the tenure of *free burgage* was no other than a species of free socage.—*Norton, Com. on Lond., p. 122.*

In continuation of the remarks upon the origin of Borough rights (*ant², p. lix n.*), it may be added, that *Burgagium* is described to be an ancient tenure, proper to boroughs, whereby the inhabitants, by custom, hold their lands and tenements of the King, or other lord of the borough, at a certain yearly rent (*Old Tenures*). It is a kind of socage tenure, and signifieth the service whereby the borough is holden (1 *Inst.*, 106). Burgers and Burghesses (*Burgarii et Burgenses*) are properly (though the latter term is now commonly employed to represent a circumscribed import) men of trade, or the inhabitants of a borough, as were the men of London described at the Conquest: Willielmus Rex salut. Willielmum Episcopum, et Godfredum Portgresium, et *omnem Burguare infra London.*—*Chart. Will. Cong.*

guished by the names which they afterwards circumstantially acquired; but the common term, there is little doubt, speedily followed the general police regulations whence it is derived; and without again referring to the Saxon policy, it is sufficient to know that, immediately subsequent to the establishment of the Norman rule, a *Wardagium** existed, as a local tax: and it is thence not too much to infer, that the sokes, as guarded districts, had at any rate then acquired the general designation, of which there is no direct evidence until the reign of Henry II, when it seems to have been not only known, but *authorized* and *established*; and so known and established, in the year 1184, within four years after the amerciamento of the adulterine gilds,—at a time when that amerciamento was yet unsatisfied, and when those illegitimate establishments were still, and for many years afterward, in the records of the Exchequer, distinguished by the term *gilds*, from the district divisions or sokes, which it is clear had then, and for some indefinite period antecedently, acquired a designation which they have since retained. This instance of the application of the term, the earliest yet known, occurs in

* *Wardagium*—Wardpeny: Money paid and contributed to Watch and Ward.—*Domesday*; *Jacob*.

the memoranda of account of the aid assessed upon the *wards of the city*, on the occasion of the marriage of the King's daughter.*

The difficulty of the identity, and one, perhaps, which has in no slight degree embarrassed enquiry, seems to have been occasioned by the change of name, which occurred both to the district governments themselves, and to the rulers or proprietors of them, during the period of transition from the Saxon to the Norman customs; and it is not a little remarkable, that when the Saxon title is admitted to have applied to the one, the Norman name was employed to represent the other, and interchangeably; but at no time are they found otherwise to have been in use. Thus, the Saxon title of Alderman is found applied to the head of local jurisdictions, known by the Norman designation of Wards; and the same districts, by the Saxon title of Sokes, are found in the proprietorship of rulers, described by the Norman designation of Barons.† Hence a theory arises, that the repre-

* *Cives Londoniæ debent xixl. et xlijs. et liijd. de auxilio Civitatis, quod prius assisum fuit per Wardas Civitatis, et postea concessum per Justicias.—Mag. Rot. 31 Hen. II, tit. de Auxilio ad Maritandum Filiam Regis.*

† The Church, Barons, and Citizens, to have their socs in peace (*Chart. Hen. I.*) By Barons, says Mr. Norton,

sentative title of the proprietors of the London sokes, exactly according with the feudal principle generally introduced at the Norman conquest, readily accommodated itself to the new order of institutions that gradually acquired influence; and as the true and original principle of parliamentary honors, was the possession of so much land as constituted a Barony,—and our early nobility were all *Barons by tenure*, and summoned to the national council by virtue of the same certain possession; so the barons of the city socs were city legislators by virtue of the same tenure; and as their proprietary and alienable representative rights partook of the nature and fortunes of a barony by tenure, the same period that saw the title of the latter superseded, by the will of the Crown, to create parliamentary barons by writ of summons,—and, it may be

are meant the Aldermen, who were so styled in virtue of their ward or leet jurisdictions (*Com. on Lond.*, p. 369). The Aldermen of London, in respect of their wardmote jurisdictions, were entitled to an equal rank with the barons of manors (*Lambard.*, *Arch.*) In the early tallages, the aldermen were rated as barons, the mayor being taxed as an earl (*Gough*, *Lond. Triumph.*); and, by the records of the College of Arms, it appears that the funeral rites of a mayor and alderman of London were conducted with the heraldic pomp appropriated to the respective ranks abovementioned.

added, called the people into representative existence,—also broke down the proprietary rights of the city sokes, and returned the appointment of the Aldermen to the election of the free tenants of the district.*

“ The proprietary title of the Alderman to his soke or ward (says Mr. Norton) was certainly of short duration, and perhaps never universal throughout the city. It probably arose from the introduction of the feudal system, and expired with the grant of those exemptions found secured to the citizens by their early charters, the establishment of a com-

* An exception occurs in the instance of the Ward of Portsoken, over which the Prior of the Holy Trinity, for the time being, retained his original territorial jurisdiction and representative right, until the dissolution of the monastery in the reign of Henry VIII. Whether the same exception attended the appointment in the ward of Aldgate, has not been ascertained; but, in other particulars, the exceptions of the ecclesiastical wards are remarkable. As in the case of a subsidy granted to King Edw. III, in 1339, while the twenty-five Wards raised the gross sum of 12,385*l.* 13*s.* 4*d.*, Portsoken Ward contributed only 27*l.* 10*s.*, and Aldgate Ward, 30*l.* (*Fabian*). The withering influence of the “dead hand” in the heart of a thriving city is here apparent; and to so low an ebb had fallen the revenues of this once powerful establishment, with the two extensive sokes under its control, that, at the dissolution, it is stated the Prior and Canons heartily desired to get rid of the incumbrance.

munity, and the election of their own magistrates" * Without establishing any principle, Mr. Norton's theory is merely a transposition of the effect for the cause; and even admitting, as previously laid down, the proprietary title to have been coincidental with the rights of a manorial jurisdiction, the difficulty of the case is by no means reduced,—for it is not the less certain, that while, as in the ward of Portsoken, the right of jurisdiction, and the rank in council, attended the proprietor of many of them, yet there were other sokes or manors within the city, which, though they may originally have entitled the proprietor, as in the case last mentioned, "*to be admitted an alderman to govern the same land and soke,*" or, as in that of Castle Baynard,† "*to appoint*

* Com. on Lond., p. 122.

† The castle of Baynard, which gave title to the present ward, was erected in the reigns of William I and his son, surnamed Rufus, by the adventurer whose name it bears, an attendant upon the Conqueror in his fortunes, who died in the latter reign; and the inheritance passed to his descendants. About the year 1111, William Baynard being attainted of felony, the castle devolved to the Crown, when it was conveyed to Robert de Clare, whose descendants enjoyed it until 1213, when it was in the hands of Robert Fitz-Walter (who was the son of Walter, the son of Robert, the son of Robert de Clare), of whom is related (whether true or a fiction) the melancholy and romantic tale to be found in Stow and other historians. He was,

a sokeman," or deputy, with the like object, as also did Eustacius, 8th prior of the Holy

however, one of the celebrated twenty-five barons appointed to enforce the observance of Magna Charta; and by those engaged in the enterprise of obtaining the grant of it from King John, he was styled "*Marshal of the Army of God and Holy Church*" (*Nich. Synop.*) He died in 1234.

"How the possession passed from the family of De Clare," says Mr. Malcolm (*Lond. Rediv.*, v. ii, p. 360), "does not appear; but it is known to have been in the possession of the royal family in the reign of Henry VI; for Humphrey, duke of Gloucester, rebuilt the castle after it was burnt, in 1428. By the attainder of this duke, the Crown came into possession, and the succeeding monarchs made it their occasional residence, till the time of Queen Mary, after which the earls of Pembroke possessed it."

The apparent difficulty is readily got over by the fact, that the possession did not pass from the family of De Clare at the time supposed, but, on the contrary, attended the inheritance of their transition of rank and title, to Thomas, earl of Gloucester, so created in 1397 (great grandson of Alianor de Clare); upon whose attainder, in 1400, Humphrey Plantagenet, youngest son of Henry IV (duke of Gloucester and earl of Pembroke, 1414), was the next grantee; who, dying without issue in 1446, his brother Richard (created duke of Gloucester, 1461) ascended the throne as Richard III, in 1483, when his honors and possessions merged in the Crown, and Henry VII and his successors necessarily came into possession. Mr. Malcolm seems to have been involved in a strange error, particularly as to the attainder of "the good Duke Humphrey." Henry VII spent large sums in repairing the Castle of Baynard, and it was probably his renovated structure that became involved in the general ruin of 1666.

Trinity; yet, under the reformation to the elective system, such manors or sokes did not

The Fitzwalters were chief bannerets of London in fee of this castle, and possessed "*a soke or ward within the city, that is to say, all the parish of St. Andrew*, which, in 1303, being in the possession of another Robert Fitzwalter, a collateral descendant of the preceding, he claimed to be chastilian and banner-bearer of London, in fee for the chastiliary which he and his ancestors had in Castle Baynard; and appendant thereunto all the things underwritten :

" That he ought to have a sokeman, and to place what sokeman he will, so he be of the sokemanry, or the same ward; and if any of the sokemanry be impleaded in the Guildhall, of any thing that toucheth not the body of the mayor that for the time is, or that toucheth the body of no sheriff, it is not lawful for the sokeman of the sokemanry of the said Fitzwalter to demand a court of the said Robert—and the mayor and his citizens of London ought to grant him to have a court, and in his court he ought to bring his judgments.

" If any, therefore, be taken in his sokemanry, he ought to have his stocks and imprisonment in his soken: and he shall be brought from thence to the Guildhall before the mayor, and there they shall provide him his judgment; but his judgment shall not be published till he come into the court of the said Robert, and in his liberty.

" And the judgment shall be such, that if he have deserved death by treason, he ought to be tied to a post in the Thames at a good wharf, where boats are fastened, two ebbings and two flowings of the water. And if he be condemned for a common thief, he ought to be led to the elms, and there suffer his judgment, as other thieves. And so the said Robert and his heirs hath honor and a great franchise within the city, and citizens are bound to

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confer the same privilege—never acquired the distinct character of wards, nor were so represented,* but seem, by some understanding at

do him right, &c.”—*Claim and Admission of Robert Fitzwalter*, 31 *Edw. I*, anno 1303, *Sir John Blund, Mayor*.

The possession of the castle, as representing the lordship, necessarily carried with it the soc and franchise; and the record of the claim affords interesting evidence of the nature of a “great franchise,” at a time when the power of the local courts had been subdued and sunk to unimportance, and the proprietary jurisdictions themselves were on the eve of final abolition. In 1284 (12 *Edw. I*, Rich. Aswey was alderman (*Lib. Alb.*, fo. 116); and in 1312, Will. le Loyre, alderman “in Warda Castri Bernardi,” answered for the tallage assessed upon it.—*Mag. Rot.*, 6 *Edw. II*.

* Of the many which are known to have existed, and may be found mentioned in the histories, it will be sufficient to cite the instance of Bucklersbury, or Buckle’s Bury, as it seems to have been called, [*quære*, Bukerill, or Bokerel’s Burg], the *manor* of one Buckle [*quære*, Bokerel—Andrew Bokerel, sheriff 1223, alderman 1226, mayor 1231-7], who dwelt and *kept his court, or Bury*, says Stow, at the Barge House. Edward III had here a residence, and a mint for silver; and, until Walbrook was filled up, barges were towed from the Thames to Buckle’s Bury, which, in consequence, afterwards acquired the sign of the Barge. So far the ordinary resources. Further enquiries might probably trace the inheritance to the possession of the Crown; but to pursue the enquiry to a profitable end, would perhaps be opening a subject too lengthy for the present moment; it is pretty certain, however, that the city sokes, and (if the tenure gave the representative right)—the early aldermanries, were more numerous than the later wards.

the time, to have merged into other districts, retaining still, in some minor particulars, a subdivisional and precinct character. Nor does the arrangement seem to have been arbitrary upon any principle of numerical limitation of inhabitants or extent of boundary, for some of the smallest of the proprietary aldermanries (of which Bassishaw may be cited in example*) preserved their representative right.

* Bassishaw Ward, or the Ward of Basing's Haugh or Hall, the mansion of the ancient and important family of the Basings, to whom the area of this Ward is supposed to have belonged *as of demesne*, and hence to have derived its name. Of this family, Solomon Basing was mayor in 1216; and to Adam Basing his son, also mayor in 1251, Henry III granted the advowson of the church in Basing Hall, and several liberties and privileges (*Stow*). Robert de Basinges, Mercer, was personally assessed in the sum of *xxl.* to the tallage, 11th Henry III (1226), and Hugh de Basing (sheriff in 1214) answered in the Exchequer for *xij* marks, *the tallage assessed upon his Ward*, 14th Hen. II (1229); so that there seems a probability *Stow* may have been in error, in stating the succession from Solomon Basing to Adam as his son, particularly as so great an interval as thirty-five years occurs between their mayoralty; though it does not follow, that because Hugh Basing was an alderman in 1229, that he was so of the aldermanry of Bassishaw; for in 1284, Richard Blunt was alderman of Bassishaw, while Robert Basing had the aldermanry of Candlewyk-strete; and in 1312, "Rich. de Refham, ald. in Warda de Basingeshawe," answered in the Exchequer for the tallage of the Ward.

It is also remarkable, that the Ward of Aldgate,* a soke appertaining to the Prior and Canons of the Holy Trinity, and confirmed to them in terms precisely similar to their "Portsoke;" yet is there nothing to shew

The mansion afterwards, in the 36th Edw. III, being in the possession of Thomas Bakewell, according to the custom of the period, it obtained the name of Bakewell Hall; and again, became corrupted to its present well-known title of Blackwell Hall. It then appears to have passed into the possession of the crown; the hall, gardens, and appurtenances having been sold to the city by Richard II for the sum of fifty pounds; when the hall was applied to the purpose of a public market for woollen goods.

* The port of Aldgate, with the soke thereunto belonging, was given to the Priory of the Holy Trinity, called Christchurch, by Maud, queen of Henry I, in the following terms:—

Maud by the grace of God, queen of England, to R., bishop of London, and all the faithful of the holy church, greeting. Be it known to you that I, by the advice of Archbishop Anselm, and with the assent and confirmation of my lord King Henry, have given and confirmed to the church of Christ, seated near the walls of London, free and discharged from all subjection, as well to the church of Waltham and all other churches, except the church of St. Paul, London, and the bishops, with all things appertaining to the same, for the honour of God, to the Canons regularly serving God in the same, with Norman the prior, for ever, for the redemption of souls and of those of our parents. I have in like manner given them the gate of Aldgate, *with the soc belonging to the same, which was my lordship*, and two third parts of the revenue of the city of Exeter. And it is my will, and I command, that

that the Prior and Canons exercised the same right of representative appointment; nor is it certain that the ward was separately represented, until, by the record of 1285, John de Northampton is stated then to have been the alderman of it.* In like manner, the two sokes *de Farndon*,† within

the said Canons hold the lands, and all things belonging to the church, well and peaceably and honourably and freely, with all the liberties and customs which my lord King Henry by his charter confirmed to them, so that neither wrong nor injury be done to them. Witness : William, bishop of Winchester ; Roger, bishop of Salisbury ; Robert, bishop of Lincoln.

This grant was confirmed by Henry I, with further privileges of *sac and soc*, toll and theame, infangtheft and outfangtheft, and *all other their customs, as well within the city as without* (*Rymer, Fœd.*, v. I.) Thus the Prior and Canons of the Holy Trinity became possessed of two sokes, distinguished by them as their outer and inner soc, the former being the ward of Portsoken ; and the boundary of the ward of Aldgate is identical with their inner soc, according to a survey by one of that house, and recorded in an old book called Dunthorne, belonging to the same.—*Stow ; Allen*, v. iii, p. 98.

* Lib. Alb., fo. 116.

† The great ward of Farndon, Farendon, or Farringdon, consisting of an inner and outer soc, is said to have derived its name from William de Faryngdon, goldsmith, in 1279 (7 Edw. I), who then became the purchaser for a valuable consideration ; and the aldermanry remained in the family for a period of eighty years, by the tenure of a gillflower annually presented at Easter (*Firma Burgi*, p. 14). In 1312, "Nicholaus de Farndon, alderman in

and without the walls, were the ward of one alderman, until a separate jurisdiction was

Warda de Farndon," answered in the Exchequer for the tallage assessed upon the ward (*Mag. Rot.*, 6 *Edw.* II ; *Madox*). In the list of the corporation in 1284 (12 *Edw.* I), "Lodgate and Newgate" are described as the aldermanry of Will. de Farndon (*Lib. Alb.*, fo. 116), so that the name of the district government had not then become settled.

In quoting from Fabian the assessment of the tallage, in the 13th *Edw.* III (anno 1339), in which Farringdon Ward is divided into *within* and *without*,—"It may be a matter for enquiry," says Mr. Maitland (*Hist. Lond.*, v. I, p. 126), "how the city was by this assessment divided into *twenty-five* wards, when we are certain there were no more than *twenty-four* in the year 1285, and that the division into *within* and *without* was not made until the 17th *Rich.* II (1393), by order of Parliament." Mr. Maitland assumes too much (even if such division would account for the difference, which it will not), when he supposes the Act mentioned *divided the Ward*, in the sense in which he uses the term; on the contrary, it is *therein* described as "the ward of Faringdon *within* and *without* the city"—the object of the measure being to *divide the duties of the alderman*, which, by the increased number of inhabitants, had become too much for the supervision of one person; and this very naturally was accomplished, by appointing an additional alderman to the already distinct division *without the walls*. The 17th *Rich.* II, c. 13, set forth: "Item, come la garde de Farndon, dedeins et dehors de la oitie d' Londres, est taunt encreasceez des possessions et enhabitantz en icelle en poi des ans passez, q' la gov'nance dicell' est trop laborouse et grevouise p' une p'sone de le occupier et duement gov'ner; N're S' le Roi, p' assent de son conseil en cest p'sent p'lement, a le prier del Mair, Aldermans, et la co'ialte du dite Citee, ad or-

appointed by parliamentary provision, in the reign of Richard II. The Ward of Queen-

deinez et gⁿtez q' p'eutre cy et le fest de Seint Gregoire p'schein avenir, les gentz *de la dite garde de Farndon' dedeins* puissent estire un Alderman sage sufficeant et able p' gov'ner *mesme la garde dedeins*, et estre nome lalderman' de la garde de Farndon' dedeins; et q' p'eutre cy et le dit fest de Seint Gregoire, les Gentz *de la Garde de Farndon' dehors* puissent estire un autre Alderman sage sufficeant et able p' gov'ner *mesme la Garde de Farndon' dehors, &c.*" It is evident that, although the ward of one alderman, the aldermanry *de Farndon*, like that of the Prior of the Holy Trinity, consisted of an inner and an outer soke; and the inference is not improbable, that the assessment would be distinct. In the record to which Mr. Maitland refers, the ward of W. de Farndon is called "Lodgate and Newgate;" and the aldermanry which the Farnons became possessed of by purchase, and transmitted to it permanently their name, in a deed cited by Stow, of the 5th of Edw. I, is described, "the aldermanrie between Lodgate and Newgate, and also without the same Gate, which aldermanrie Ankerius de Averno held during his life." At an earlier period, the ward of Anketil de Avern is described to be the "parish of St. Bridget" (*lib. B*), and seems to have been the outer soke, of which Will. Tailour was alderman in the 37th of Hen. VI, under the name of "Fleet-street Ward" (*Harl. MS.*, 565)—a description which is remarkable, so long after the names of the wards are supposed to have been settled, and that, in particular, described in an Act of Parliament.

The document of the date of the 5th Edw. I, cited by Stow, witnessed by G. de Rokesley, mair; R. Arras, one of the sheriff; H. Wales (Waleys), P. le Taylor, T. de Basing, T. Horn, and N. Blackthorn, aldermen, sets forth, that Tho. de Ardene, son and heir of Sir Ralf Ar-

hithe—a Saxon soke, a demesne of the king, a proprietary aldermanry, and ultimately an electively-represented Ward,*—forms a sub-

dene, knt., granted to Ralfe le Feure, citizen of London (sheriff 1277), all the aldermanrie (as before described) *within the city and the suburb thereof, within Ludgate and Newgate and without*, with the appurtenances, &c. (which aldermanrie, Ankerias de Auverne held during his life, by the grant of the said Tho. de Ardene)—to have and to hold the same to him, his heirs and assigns, in fee &c., yielding yearly to the said Thomas and his heirs one clove or allp of gilliflower at Easter, in consideration of twenty marcs (*Trin. Com. 4 & 5 Edw. I., Rot. b.*) In the 7th of the same king (anno 1279), the aldermanry was purchased by Will. de Faryngdon, goldsmith, under the same tenure yearly of rendering a gilliflower at Easter, as before mentioned.

* Queenhithe Ward, anciently of the king's demesne, is said, together with the 'Hythe or quay for the landing of merchandize, to have been granted by Henry III to his queen, and hence to have derived its name (*Norton, Com., p. 411*). It seems, however, to have been of much earlier importance, and, by the name of Edred's Hythe [Edred, tenth monarch of the Anglo-Saxon race, son of Edward the Elder, reigned A.D. 946-55], to have been of note in the time of the Saxons. By charter of King Stephen, it was granted to William de Ypre; the ferm whereof, in fee and inheritance, he conveyed to the Prior and Convent of the Holy Trinity without Aldgate: after which, the Hythe came again into the king's hands. In the 10 John, "*Hetha Regina* in Lond'," was granted at ferm to Geoffrey Fitz Piers, son of the earl of Essex; and in the 6th Hen. III, being then called *Ripa Regina*, it was granted by the king to Richard de Ripariis, or Rivers.

Here it was, at the Queen's Hith and at Billensgate,

ject of curious enquiry in several particulars of city history, which, however, it is not here necessary to broach, since it is sufficiently

that the customs anciently were levied—the only legal quays for the landing of prisable merchandize. Stow speaks of the Queen's Hithe, however, as miserably fallen to decay as a port of trade, in consequence of the danger and difficulty of passing the bridge from below with loaded craft, which gave encouragement to the lower quay, and ultimately to the establishment of the Custom-house there.

The 6th charter of Henry III to the citizens of London confirms a covenant, made in the mayoralty of John Gisors, between the mayor and commonalty on the one part, and Richard, earl of Cornwall, the king's brother, on the other part, by which it appears that the earl was seised in possession of the port of Queenhithe, in virtue whereof he claimed the tolls and customs of the same; and for the consideration of fifty pounds per annum, granted the same in fee, by deed of indenture, to the commonalty of London.

An Inquisition of the 3rd Edw. I, bearing upon this point, would seem to infer usurpation to the seisin of the earl, notwithstanding that his grant to the citizens had been confirmed by the king's charter. The presentment stated, "that the Queen's Hithe was sometime belonging to the city of London; and how it came to the earl of Cornwall and his heirs they knew not, nor by what warrant: that it was worth £52. per annum: And moreover they say, that king John, father of the lord king Henry, gave Queen Hithe to Alianore, then queen of England: *and was had of the king's demesne all his time.* But from that time until now, the earl of Cornwall and his heirs held it, and still did hold it, against the crown, and in disherison of the king, as it seemed to them. But by

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clear that the aldermanries, or early wards, were Saxon sokes or gilds, the proprietary or manorial rights of which were recognized sub-

what warrant they knew not." Whereupon the custody was delivered to the sheriffs.

The Exchequer records in some measure support the finding of the inquisitors, and further shew, that the port had acquired the title of the Queen's Hythe at a still earlier date.

In the reign of Henry II, Will. de Brun and Will. le Bland accounted for "xxxijl. de firma *Hedæ Reginæ*" (*Mag. Rot.*, 23 *Hen.* II.) Five years later, the former only accounted for the ferm: Will. Brunus, r. c. de xlijl. de firma *Hedæ Reginæ* (*Mag. Rot.*, 28 *Hen.* II.) In the 29th, 31st and 33rd year of the same king, the citizens of London accounted for the ferm: *Cives Londoniæ* r. c. de xlijl. de firma *Hedæ Reginæ* (*Mag. Rot.*, 29 *Hen.* II.) *Cives Lond.* debent xxjl. et xvjs. et viijd. de *veteri firma Hedæ Reginæ* (*Mag. Rot.*, 31 *Hen.* II.) *Cives Lond.* r. c. de xvijl. et xvjs. et viijd. de *veteri firma Hedæ Reginæ*.—*Mag. Rot.*, 33 *Hen.* II.

In the 9th *Hen.* III (1224), And. Bokerel and John Travers had the Hythe in ferm: And. Bokerel et Joh. Travers [debent] xxl. et xs. de firma *Ripæ Reginæ* de anno ix^o; de quibus *Infirmi Hospitalis S. Egidij Lond.* debent habere xxxs. de eleemosina constituta (*Mag. Rot.*, 11 *Hen.* III.) In the 11th of the same reign, it was granted to Richard Renger, at the ferm of xli. per annum, during the king's pleasure: Ric. Renger, [debet] xli. de firma *Ripæ Reginæ* quam Rex concessit ei per talem firmam annuatim quamdiu Regi placuerit (*Ib. just.*) It was afterwards held by And. Bokerel and John Travers; and by the citizens of London and Thomas de Cirencester as *Custodes* (*Mag. Rot.*, 14 *Hen.* III.—*Madox*.

sequently to the conquest, and guaranteed by charter;* and that the leet jurisdiction, with the liabilities and services (scot and lot†) of the Saxon tenants in freepledge, have yet, through all the changes of conquest, revolution, and ages of amelioration in our social state, been transmitted to our own day in identification of the fact.

These franchises—liberties in the hands of the manorial lords or barons of the sokes, were sufficiently arbitrary to be, without doubt, at times any thing than liberties to the governed. In the reign of Henry I, when these jurisdictions are found to have been confirmed by charter within the city, the fran-

In the 12th Hen. III (1227), And. Bokerel, alderman (Pepperer—Mayor, 1231-7), accounted in the Exchequer, in the sum of Lxxl. iijs. viijd. for the tallage “de sua Warda” (*Mag. Rot.*, 12 Hen. III.) And again, two years later, in the sum of xxxl. xvijs. viijd.—*Mag. Rot.*, 14 Hen. III.

In 1284 (12 Edw. I), Simon de Jadestock was alderman of Queenhithe Ward (*Lib. Alb.*, fo. 116). And in 1312, Will. de Beloyne, “quondam alderman in Warda de Rippe Reginæ,” accounted for the arrear of tallage due from his Ward.—*Mag. Rot.*, 6 Edw. II.

* “The barons and citizens to have their sokes in peace; and guests tarrying within any of those sokes to pay custom to those only to whom the soke belonged.”—*Chart. H. I.*

† Vide pp. 115, 148, n.

chises represented as comprising them, are identical with those appertaining to the *Curia Baronis*, or manor courts,* and described by the Saxon terms of *sac*, *soc*, *thol*, *theam*, *infangtheft* and *outfangtheft*†—terms which it

* LL. H. I, c. 9, 10.

† *Sac* (*sacha*, vel *sacca*) is an ancient privilege which the lord of a manor claimed to have in his court, of holding plea in causes of trespass arising among his tenants, and of imposing fines and amerciaments touching the same. Rastal uses the term as the amerciamment and forfeiture itself. In the laws of the Confessor, *Sacha* is described as the amerciamment paid by him, who denieth that which is proved against him to be true, or affirmeth that thing the contrary whereof is true (*Lamb.*, p. 132). I am informed, says Dr. Cowell, that the word *Sac*, in the Saxon tongue, doth properly signify so much as *causa* with the Latines.

Soc, according to Bracton, signifies a power or liberty of jurisdiction (*lib.* 3, t. 2, c. 8): hence, the low Latin word *Soca* is used for a seigniory, or lordship enfranchised by the king, with the liberty of holding or keeping a court of the socmen. According to Fleta, it signified the meeting or assembly, in any place within the manor or liberty, of those kind of tenants (*liberi homines*), who were exempted from those common services of the prince and country whereunto subjects are ordinarily tied. This kind of liberty is in divers places at this day in England, and commonly known by the name of Soke or Soken. Skene explains *Sok* as suit of court; and Dr. Cowell adds,—the signification, as I have been credibly informed, is as much as *Inquisitio*.—*Vide ante*, p. xci, n.

Tholl, aliàs *Toll*, has in our common law two significa-

will be necessary to examine, in order to the more complete identity.

In the courts of these district jurisdictions are found the earliest detail of social government, from the time when, as Saxon gilds, a voluntary association of them in the time of

tions: first, as a liberty to buy and sell within the precincts of a manor—in the words of Lambard: *Thol* (*quod nos dicimus Tholonium*), *est scilicet, quod habeat libertatem vendredi et emendi in terra sua*. Secondly, it is used for a liberty to *take*, as to be *free from toll*.—*Bracton*.

Theam, aliàs *Team* (Than, i. *Servus*), is described by Glanvil to have signified a royalty, or privilege granted by the king's charter to the lord of a manor, for the having, restraining and judging of bondsmen and villeins, with their children, goods and chattels (*lib.* 5, c. 2). So also Skene. The *Curia de Theme*, according to the old statute, seems to have had reference to the question of liberty, when it was in doubt whether any person was a bondman or freeman.

Infangthefe, was a liberty granted to lords of manors to judge any thief taken within their fee (*Bract.*, l. 3, t. 2, c. 8). So also in the laws of the Conf.: *Infangthefe, Justitia cognoscentis latronis sua est, de homine suo si captus fuerit super terram suam*:—and where the private jurisdiction did not exist, the more legitimate power was in force: *Illi verò qui non habent has consuetudines coram justiciis regia rectum faciant in Hundredis, vel Wapentachiis, vel in Scyris*.—*Lambard*, n. 26.

Outfangthefe, aliàs *Utfangthefe*, was used in the ancient common law for a liberty, whereby the lord was enabled to call any man dwelling within his manor, and taken for felony in any other place out of his fee, to judgment in his own court (*Rastal*). See *Castle Baynard*, p. cix, n.

Æthelstan is found on record,* to the several periods when they gradually gave way to the extended rule of one concentrated government; and further, that the alleged abuses of the proprietary system, which, in the course of social amelioration, had led to repeated efforts on the part of the citizens to rid themselves of what, perhaps, had become rather a vexatious than useful subjection, was finally successful in wresting the manorial right of property from the aldermen, in the reign of Edward II.

In the time of the Saxons, it had been found sufficient to commit the administration of justice to the county, and other inferior courts; but, as the introduction of the Norman population, principles and manners, had led to many disorders in the kingdom, a higher authority, with more experience, was required, than possessed by those who presided in these petty tribunals.†

The first encroachment upon the leet courts, was occasioned by the increasing jurisdiction of the *curia regis*, which, committed to justiciaries, under the supervision of the capital

* *Judicia Civitatis Londoniæ (LL. Ang.-Sax., Wilkins, p. 65).* That the association was voluntary, appears from Art. IX, which provides for other gilds that might thereafter join the confederation.

† Crabbe, *Hist. Engl. Law*, p. 99.

justiciar, was enabled to compass a greater scope of business than when the king alone sat in person.

The justices in Eyre, who began to take their *Iters* through the kingdom as early as the 18th Hen. I,* further superseded the authority of the local courts; and they finally sunk to unimportance under the Magna Charta of King John, by which all offences, excepting common nuisances, were removed from the leet jurisdictions, to be tried before the king's judges.†

Within these gildated districts, the free inhabitants (frankpledges of the several casts‡ —freemen of their own personal liberty) exercised all the immunities, whatever they might have been, appertaining to the same condition within the Saxon hundred; and the reves (soke-reves, barons of sokes, aldermen) who governed them, answered to the *aldermanni hundredorum* within the county:§ for the city was ranked as a shire (*county corporate*), and each of its wards as a hundred. || Pursuing the same

* Madox, Hist. Exch., c. 3.

† Mag. Chart. Reg. Joh., c. 24: 1 Hen. III, c. 19: 9 Hen. III, c. 17.—*Blackst. Law Tracts*, v. II.

‡ Ante, p. lxxiv, n.

§ Ante, pp. lv, n.; lxxxix, n.

|| Ante, pp. llii; lxxxvii, n.

analogous course of argument, the hundred court leet and the court of wardmote are found consimilar in all the particulars of their constitution, and their assembled community respectively identified, under the denomination of the Folcmote;* and, as the bishop and reve (portreve) were in authority over Saxon London† (London-burgh) so the bishop and alderman (*aldermannus comitatus*, afterwards *earl*) held the same judicial rank within the county.‡ Hence, the county court and the London court of Hustings, over which each respectively presided, are again parallel in their operation and component particulars.§

* 3 Inst., 69; Lib. Alb., 9.

† Ante, p. lv. Reve, Greve, Gerefa, as also alderman, were titles essentially judicial (*vide ante*, p. lxxxviii, n.) Alfred appointed one alderman over all London.—*Sax. Chron.*, A. D. 886.

‡ The parallel may be carried still further, for in the *capitulum*, or poll-tax (4 Rich. II), the mayor of London was taxed as an earl,—the aldermen as barons: and the heralds (the most exact observers and preservers of ancient and obsolete ceremonies), in marshalling the funerals of those civic dignitaries, always awarded to them, as of hereditary or prescriptive right, the heraldic pageantry and ceremonial appertaining, respectively, to the titular ranks above assigned to them.

§ The Scyremote, i. e. the mote or court of the shire, was the principal court among the Saxons for the determination of all causes, both ecclesiastical and secular; the former being heard and determined before the bishop, and the

Of the early popular convocations, "the citizens," says Mr. Norton, "had for ages been used to assemble, for common purposes, in the husting assemblies; and they had likewise their soke or gild jurisdictions, over which the reves or aldermen respectively presided." * The nature of the latter jurisdiction and services has already been identified with the wards, their local government and lots; but the congregation of the citizens (if by the term is to be understood the burghers, or general body of householders in free-pledge) for common purposes, in "husting assemblies," is not so clearly to be comprehended—nor is it reconcilable with known facts, or the etymology of the term by which the assembly is described. That the ancient burghers or citizens met in Folcmote† is known; but with

latter before the alderman. In the reigns of Will. I & II, the administration of justice still remained the same; but the scyremote was now called the *Comitatus*, or county court, appeal being from the hundred court to the county court, which was next in authority to the supreme court of the kingdom, held in the *aula*, or palace, where the Saxon kings administered justice in person (*L L. Eadg.*, c. 5; *Can.*, c. 17; *Dugd., Orig. Jur.*, p. 28). The county court was not of record, any more than was originally the Hustings Court of London; and, in both, the freeholders composed the jury.

* Com. on Lond., p. 404.

† Folcmote (*Folegemot, conventus populi*) according to

such a general congregation, the court of Hustings, either as a judicial or conciliar as-

Somner, was a general assembly of the people, to consider of and order matters of the commonwealth (*Sax. Dict.*) : *Omnes procures Regni et milites et liberi homines universi totius regni Britanniae facere debent in pleno Folcmote fidelitatem Domino Regi, &c.* (*L.L. Edw. Conf.*, c. 35). Lord Coke says the Hundred Court Leet and the Wardmote Court were identical, under the denomination of Folcmote (3 *Inst.*, 69 ; *Lib. Alb.*, 9) : so that the term seems to have had a general and particular application—firstly, to a popular assemblage, and secondly, judicially, to the local courts. In the latter character, it appears to have been employed in the charter of Henry I : “ — et amplius non sit miskenninge in Hustengo, neque in Folkesmot, neque in aliis placitis infra civitatem ” (*Chart.* 33 *Hen. I.*, *per inspec. Pat.* 2 *Edw. IV.*) Stow, referring to the former sense of the term (both general and particular), mentions three chief folcmotes : one at the feast of St. Michael, to know who is sheriff, and hear the commandment ; the second at Christmas, to make the wards, called *Wardmote* ; the third at the feast of St. John, i. e. Midsummer, to guard the City [the “ Midsummer’s Watch ”—*vide p.* 140, *n.*]—*Lib. Alb.* According to Kennett, the folcmote was a common council of a city, town or borough, convened by the sound of bell to the mote hall ; or it was applied to a larger congress of all the freemen within a county, called the *Shiremote*, where all the knights and military tenants did fealty to the king, and elected the annual sheriff on the 1st October, until the popular election devolved to the king’s nomination, anno 1315 (3 *Edw. I.*) The *Shiremote* then merged into the sheriff’s *tourne* and *assizes* : and the *city folcmote*, in like manner, was swallowed up in the governing and representative power of mayor, aldermen and commonalty.

sembly, so far from affording identity, seems marked by a particular distinction,* and to have been composed of persons of a different rank, with superior objects and authority. And here we may again have recourse to analogy; for the *comitatus*, or county court, was composed of the freeholders or barons (originally a very small number)† when, under the feudal tenures, those terms were synonymous, as representing tenants in chief, or the immediate tenants of the Crown; and later, the *barones minores*, or knights, introduced by the splitting of baronies, and the creation of the old and new feoffment.‡ So the court of Hustings, composed of the chief magistrate

* *Dúrping*, a council, court, or tribunal, apparently so called from its being held within a building, at a time when other courts were held in the open air.—*Ant. Laws & Institut. of Engl.*, fol. 1840, *Gloss. in voce*.

† By the Domesday Survey, it appears that the number of such tenants, in the county of Surrey for instance, was only thirty-six, among whom the whole county was divided. By the subdivision of property these greatly increased; yet, for a considerable period, the ‘community of the shires’ attending the county courts were very considerable proprietors, who, from the tenure of their lands, were styled *milites*, or knights, qualified for and having the exclusive right of returning to parliament “knights of the shire.” It was by stat. 8 Hen. VI, c. 7, that freeholders of forty shillings became entitled to a voice in the county.—*St. Armand., Hist. Essay*, p. cxx.

‡ *Ib.*, pp. cxviii, cxx.

and the aldermen, who, representative of the 'reves belonging to London-burgh' *—soke reves, barons of sokes, as early as the reign of Æthelstan, are found associated in council for the good government of the burgh;† and this

* Leg. Æthelst.; L.L. Ang.-Sax., ap. Wilkins.

† The Court of Hustings is holden at Guildhall, before the lord mayor and aldermen, the sheriffs and recorder (4 Inst., 247). Spelman describes it (*Pur, domus, þing, causa, quasi domus causarum*, the house of pleas, *concilium or curia*, Gloss.), as the principal and highest court in London, even in the time of the Confessor: *Debet etiam in London, quæ est caput Regni et Legum, semper Curia Domini regis singulis septimanis die Lunæ Hustingis sedere et teneri, &c.* (Wilkins, L.L. Anglo-Sax.) The same day also was confirmed for the holding of the court by chart. Hen. I, and several subsequent confirmations of the city charters.

Adopting the definition of the Glossarist before cited (*ante*, p. cxxvii, n.), it is a fair conclusion, that the ancient *Hustingum* was identical with the *Alderman-Buri*, the original of the Guildhall, where the court is still holden; and where, probably, the "reves belonging to London-burgh" assembled in the time of Æthelstan.

The parish and street called Aldermanbury, obtained their denomination from having situate within the latter, the *Bury* (Sax., *byrg*, a dwelling—commonly applied to a court or hall), i. e. *domus aldermannorum*, or Court House, where the aldermen of the London sokes congregated, for the associated purposes of common government. This building (the original Guildhall) is represented by Stow to have stood on the east side of Aldermanbury, where, in his time, the ruins were still visible. The building in Aldermanbury having fallen to decay, the new Hall upon the present site was commenced, says Fabyan, in

is probably the earliest record of a meeting, which assimilates to the constitution either of a "husting assembly," or to a court of Mayor

1411, in the mayoralty of Sir Tho. Knowles, who contributed largely towards the erection; but the whole of the aldermen appear to have been contributors, the remainder being supplied by the several Companies, and by fines levied in various ways—and thus, "of a little cottage was made a goodly house."

Perhaps the antiquity of the Alderman-Buri by name, offers the earliest evidence of the use of the term as applied to the barons of the sokes; and whether or not it had been so denominated in the time of the Saxons, it had, at any rate, been sufficiently long established in the reign of Richard I (about a century only after the Conquest), to have given its name to a family [Gilibertus de Aldreman Buri (*Menn.* 11 *Hen.* III, *rot.* 6—*Madox*); Simon de Aldermanb'y, Custos 3 Joh.]; and it seems probable that the Bury of the aldermen acquired the name of the Guildhall, only at the period when the government of the proprietary aldermen gave way to that of the communia of citizens, representing mercantile rather than territorial interests.

Bohun applies the term "Court of Hustings," to the Hall with the *Hustings* at the east end thereof, in which that ancient court met weekly for judicial purposes, and also in which the citizens of the trading communia were and still are accustomed, for common purposes, to be assembled. Of elections in Common Hall, Bohun thus expresses himself: "Election of Burgesses and other officers in the Court of Hustings.—In this Court, the burgesses to serve for the city in Parliament, must be elected by the liverymen of the respective Companies." He then describes other elections by the liverymen in the same assembly (*Priv. Lond.*, p. 239): whence it is clear that he re-

and Aldermen, which seems to have superseded by name the conciliar duties of the ancient court, in which the freeholders or barons of socs—correspondent with the tenants in

fers to the apartment of the building (the great Hall) so appropriated, and not to the persons *then* composing the assembly. The Court of Hustings, as by far the earlier institution, is certainly entitled to the paternity of the place; but there appears nothing to warrant the expression, that a common hall held within it might be called a "husting assembly;" nor is it to be supposed that a folcmote, according to its ascertained constitution, would have been there held, or could come within the assumed denomination.

Upon the authority of the *Acta Regia*, some confusion has been created by a statement, "that Guildhall, now the Townhouse of London, belonged, in the year 1280, to German Merchants" (*v. i, p. 92*). A reference to Rymer (*Fæd., vol. II, p. ii, p. 189, not 161*), however, at once exposes the error of the compiler, in supposing that a Guildhall must necessarily have been *the* Hall of the Communia of Guilds; whereas the document itself is clearly identified with the fraternity of Easterling merchants, who possessed "a Guildhall" within the city of London: *Mercatoribus Alemanniæ, qui domum habent in civitate Lond. quæ Guildhalla Theutonicorum vulgariter nuncupatur* (*Pas. Communia, 8 Edw. IV, rot. 5*). But the Hall of the "Hawnses or Stillyards, *alias* Guildhall Teutonicorum" (*Harl. MS.*) is known to have been in "Cozen's lane," in Upper Thames Street, "where," says Mr. Malcolm, "a very small fragment of the old stone hall is now standing near the Thames, incorporated into a brick wall,—another proof of the mutability of charters and immunities granted *for ever*. In the part next Thames street, the spread eagle still remains over the gateway."—*Lond. Rediviv., v. i, p. 49*.

chief in the counties—were associated with the appointed chief magistrate in the general government of the city; and since, under the several transitions of title and appointment which each have undergone, even to our own day.

The Romans, after their own form of provincial rule, governed London by a *Prefect*; the Saxons, with a particular propriety of expression, by a *Portreve* (the governor of a port)*—a title which, under other existing circumstances, obtained confirmation at the Conquest, for in the charter of William I, the chief governor of London is so styled—and synonymously, *Portgrave*, in the latter end of the reign of Henry II.† *Provost* (chief governor of a town)‡ and *Bailiff* (one go-

* Inland, the *praefecture* seems to have been retained; hence *Praefectus villa*; and *Præpositus villa* (*LL. Ed. Conf.*, c. xxviii), the chief governor of a town.

† Letters Patent granted to the Weavers' gild, 32 Hen. II (anno 1184). *Port-grave*, *-greve*, *-gersa*, *-reve*, an etymon common to the *præpositus* or *praefectus, villa* or *provincia* (*Vide antè*, p. lvii; also *Verstegan, Restitution of Decayed Intelligence*, c. 10). In the reign of Stephen, Gilbert Becket was Portgreve of London, and Andrew Buckerel Provost of the same; which latter office, says Bohun, seems to have been the same we now call *sheriff*.—*Priv. Londini*, p. 40.

‡ Leofstanus the goldsmith (a Saxon), buried in the abbey church of Bermondaey, 1116, was styled *Provost*,

verning by the commission of another),* seem to be terms which have a clear antecedence to self-government and civic rank: while Custos (which Bohun interprets Lord Warden or

Shrive, or Domesdayman of London.—*Mat. Paris* (*Vide Portoken, p. c, n.*) The latter title had particular reference to his judicial character in the court of Hustings. Such officials received the title of Domesmen, as appointed to *doom* or determine suits and controversies; hence æg ðeme, *I deem*, or judge. In the north of England, an arbitrator or elected judge is usually termed a *Dies-man*, or *Days-man*; and Dr. Hammond writes that the word *Day*, in all idioms, signifies judgment (*Jacob*). By the same deduction, we arrive at the etymology of the title of the Conqueror's survey, which was held to be a final judgment upon questions of right to which it related; as also of the Domesday-men, or judges appointed to collect the important facts that should be so definitive of title.

* Bailiff (*ballivus, fr. bailif, i. præfectus provincie*) seems to have had particular and correct reference to a jurisdiction in boroughs and hundreds, similar to that of the *shire-reve*, or sheriff, in the shires or counties; and Dr. Cowell writes, that although he cannot expressly prove that the sheriff was ever called a bailiff, yet is the county still termed (*Balliva*) a Bailiwick: “— *infra script. non est inventus in Balliva mea*” (*Kitch., ret. brev., p. 268*). At the Conquest, the term Bailiff seems to have had a generally comprehensive character: “*prout vicecomites et aldermanni, et præpositi et cæteri ballivi,*” &c. (*L.L. Gul. I, s. 56, Wilk.*) In *Magna Charta*, it is held to comprise as well sheriffs as bailiffs of hundreds (c. 28). In the 9th Hen. III, it is employed as a general term: “No sheriff, constable, escheator, nor any other our bailiffs,” &c. (c. 17). And the Stat. Glouc. (6 Edw. I) has “bailiffs of London,” in reference to the office of sheriff.

Keeper*) appears to have been indifferently applied, both to officers elected by the citizens, and others appointed by the king, in suspension of their liberty of self-rule.

The title of mayor, in its earliest acceptance, seems to have had particular application to distinguish the chief magistrate of a city;† and notwithstanding that Fabyan (himself a sheriff of London) and other chroniclers, perhaps following him implicitly rather than investigating the matter, refer the mayoralty to the 10th year of king John,‡ yet there are

* *Privilegia Londini*, p. 43.

† Duchesne in hac voce. The discrimination, however, was not of continuance in England: hence *Jacob (Law Dict.)* describes Mayor (*Prefectus urbis*) as common to cities and towns.—Vide, etiam, *Rymer, Fœd.*, t. iii, p. IV, p. 133.

‡ This charter of K. John is variously stated. Bohun says it seems to be a mistake, and refers it to the 16 Joh. (1214); accounting for the previous years, by supposing the appointment to have been in the king (*Priv. Londini*, p. 41). As this was doubtlessly the fact, the charter offers no contrary conclusion. It merely “grants and confirms” the *choice* to the barons of London.

In Arnold's Chronicle, we have—

“IX John. This yere bega' the names of mayors and sheriffs in London.”

In another (anon.) Chronicle—which accords with Fabyan—it is thus stated:—

“Henr' Fitz Aldewyne
P'mus maior

Anno X° (Joh.)
Petrus Duke
Tho^s Neel

circumstances which appear to fix the adoption of the title of mayor to that precise period, when London is understood to have acquired that incorporated form of government, by a *communia*, which is among the principal characteristics of a city.*

Bohun writes—"it is evident, in the 1 & 2 Rich. I (anno 1190-1), that London was governed by two officers called *Ballivi*, who, in old deeds, are called sheriffs or Portgeriffs, and were then *Custodes Civitatis*.† If so,

"In this yere was the firste maire of London; and seynt Marie Overeye was that yere begonne."

Harl. MS., 565, fo. 37.

In the same Chronicle, under date 3 Joh., is the following entry:

"Custodes Will. Fitz Alice
Simon de Aldermanb'y."

And then, as if to refute, by anticipation of seven years, the subsequent entry above stated, immediately follows a mention of the *Mayor*:

"This same yere be the avyse of wyse men of the citee of London were chosene xxxv men, which were sworne to holde and mayntene *with the Maire* the assyses."

* Antè, p. xlii.

† Priv. Lond., p. 40. "There can be little doubt," says Mr. Thorpe, "that γενερα springs from the same root with νεφαν (néfan), and that it *originally* meant 'spoliator, exactor,' the executor of the law. In the same manner, *scaccarium*, the king's exchequer, is derived from 'ρεακερε,' latro, spoliator, exactor" (*Ant. Laws & Institut. of Engl.*, fol. 1840; *Gloss.*, p. 97, n. b.) The ear-

perhaps the same distinction existed between these two officers, as between the Portgreve and the Provost in the reign of Stephen;* or that they were distinct from a chief magistrate, to whom the same title is otherwere applied; for at the coronation of Richard I, all persons entitled to perform any office by

liest known "Custodes," by whatever title described, appear to have been invested with the united characteristics.

In 1139 (5 Steph.) there were *four* "Sheriffs;" and in 1154 (1 Hen. II), Gervase and John were sheriffs, and accounted at the Exchequer for Danegeld (*Madox, Hist. Exch.*, v. i, p. 681). In the 4th of the same reign, five sheriffs accounted at the Exchequer for the ferm of London (*Mag. Rot.*, 4 H. II, r. 1 a.)—*Madox, F. B.*, p. 167.

In 1190-1 (1 Rich. I), Fabyan certainly mentions two "Bailliffs;" but his words are remarkable in reference to the immediate question. He says—"Soon after (i. e. his coronation), the king ordeyned the eytes of London to be ruled by ii Baylyues, whose namys were as folowyth:

Anno Domini MC x0 Anno Domini MC xci

Balliui Henry of Cornhyll

Richard fiz Ryuer." Anno primo.

He continues the series, with the same precision, to the ix—x of John, when he introduces "Henry fiz Alwyn, Primus Maior."—*Chron.*, p. 299, ap. *Ellis*.

Howel mentions that "Richard I, for supporting the Croysada and his warres in the Holy Land, got great contribution of monies from the Londoners, and in lieu thereof gave them leave to *choose* two Bailliffs yearly" (*Londinop.*, p. 34). If the term employed be at all authorized, it could only have referred to a confirmation of the choice of sheriffs.

* Antè, p. cxxxi, n. †

tenure, prescription or grant, were allowed to execute the same, upon claim and proof of such their right. *Roger de Hoveden*, and some other early annalists who have preserved an account of that ceremony, mention the service of the citizens of London, and of the chief magistrate, who, under the title of *Bailiff*, officiated in the office of the Butlery.* The mayoralty may, therefore, with safety be attributed to a commencement, at any rate, subsequently to the coronation of Richard I; and if evidence were required, in controversion of the Chroniclers, to fix the acquisition

* The observation of Hoveden—that at this solemnity *every one performed his proper office or service*,—leads to the conclusion, that those services had certainly a prior origin; yet, although our ancient historians mention when, where, and by whom the kings of England, from the time of Athelstan to Richard I, had been crowned, the last-mentioned monarch is the first indebted to them for any minute detail of the ceremony. There is no tradition that such services appertained to England anteriorly to the Norman conquest; and as they are entirely of a feudal character, besides that several of them are known to have been of Norman origin, there is reason to believe they were introduced at that era. At what period, then, did the service of the Butlery accrue to the Londoners—and by whom performed, at a time when their ruler, by whatever name entitled, so far from being their representative, was appointed by the king? There is some doubt, however, as to any prescriptive right or grant to them of this service, earlier than the occasion mentioned; for it is stated

of the title indefinitely to a period antecedently to the accession of John, an entry in the *Liber Fædorum*, an Exchequer record, compiled within living memory of the time, seems to afford indirect testimony of the fact.* An interval, however, much more circumscribed is supplied by Hoveden himself, who, although he does not mention the mayoralty as a consequence of the incorporation, yet he employs the title of mayor, in allusion to the chief magistrate, upon the next occasion after that event, viz. in the 5th Richard I, when

that, at the second coronation of Richard I, the citizens of Winchester disputed with those of London the right to this honorary service; and that a free gift of 200 marcs to the king, obtained the confirmation of the privilege to the Londoners. The *Hist. of Winchester* mentions a kind of composition of the matter, by which, at this re-coronation, the citizens of Winchester served as *Butlers of the Kitchen*, their office of *Butlers of the Pantry* having been, before that time, disposed of to the citizens of London (v. ii, p. 60).—*Banks, Hist. Marmyn, p. 168, 4to.* Hoveden, however, referring to the first coronation of the king, writes—"Clives vero Londonenses servierunt de pincernaria, et cives Wintonienses de coquina."—*Annales, p. 657.*

* Barthur's del Chennay tenuit q'nd'a p't'e in Edintun in capite de d'no rege p' s'jantium coquinae et nescitur ex cujus dono Ric' rex dedit eandem p'te Petro filio majoris Lond' cu' filia ipsius Barthi', &c.—*Lib. Fæd. (Test. de Nevil), v. ii, p. 77.* The "mayor of London" occurs several times during the reign of Richard I.—*Rot. Cur. Regis, v. I, pp. 171, 211, 432.*

the city of London, as the stronghold of loyalty to the absent and imprisoned monarch, was the scene of that remarkable "concilium regni,"* in which the clergy excommunicated earl John, his maintainers and councillors—conspirators against their king. To this loyal demonstration, the "Mayor of London" seems to have been primarily instrumental.† Thus is obtained a date, circumscribed by an interval of three years and a half, —from Sept. 3, 1189 (the coronation of the king), to the 13th March, 1193, when he landed at Sandwich.

* Hoveden says the convocation took place shortly before the return of the king—" *Non longe ante adventum regis*;" and he dates the king's return, Sunday the 18th March, 1194, which appears to be an error of computation for 1193, as the year 1194 did not commence until the 25th of the month. Few of the chroniclers agree in the dates of the events of this reign; and Fabian places the king's return in the 8th year. Hoveden himself supplies data for the correction of his discrepancy. The king was taken prisoner "In mense Nov. an. Regni 4" (*Annales*, p. 718)—i. e. A.D. 1192. He was in captivity a year and three months: and "A.D. 1194 Regis 5. Pridie nonas Februarii, feria sexta, die *Egyptiaca* Rex e captione sua Moguntii liberatur" (*Ib.*, 734). Here begins the error—the year was 1193, for the reason before stated. The king landed at Sandwich on the 13th March following, that is to say, of the same year, 1193: "Rex die Dominico tertio Idus Martii e captione, apud Sandwicum applicuit" (*Ib.*, 735). Previous to which occurrence, the "*Concilium regni adversum comitem Johannem*" had taken place.

* Hoveden, *Annales*, p. 735.

Without giving his authority, Jacob states that Richard I, in the year 1189, changed the title of the chief magistrate of London from Bailiff to Mayor ;* and Bohun describes the same transition to have occurred in the year following, the 2nd Rich. I, 1190, the era of that change in the form of the city government, of which, remarkable as it may appear, no direct evidence, by charter or record, is known to exist.

“ The first express intimation,” says Mr. Norton,† “ to be discovered on record, of London becoming a corporation, is the account of a general assembly of the nobility and citizens of London, in the second year of Ri-

* Law Dict., art. *Mayor*.

† Comm. on Lond., p. 36. There is not much in a name, for “ a rose by any other name would smell as sweet,” particularly referring to an early date; yet it is strange that so prominent a feature as the mayoralty of London should be at all a matter of doubt, when so many minor particulars are found minutely to have been noted. Bohun says—“ the first mayor of London is *generally agreed* to have been Henry Fitz-Alwin, draper, the grandson of Leofstanus the goldsmith. He was made mayor of London 2nd Rich. I, anno 1190, and continued in that office till 14 John, anno 1212, when he died, and Roger Fitz-Alwin succeeded him as mayor for 1213. But whether these were mayors by election, or created so by the sole authority of the king, is not clear.—*Priv. Londini*, p. 40.

chard I, held by his brother John, then earl of Moreton and regent of the kingdom ; at which it was granted and solemnly confirmed by oaths, that the whole city should have, or be represented by, a community or corporation.”

This meeting had for its professed object, the apparently popular measure of restraining the oppressive extravagance of the lord chancellor ; but the earl had doubtlessly his own ulterior views in fomenting the discontent.

Hoveden relates the occurrence with many particulars. He says the earl of Moreton, the archbishop of Rouen, and all the bishops, earls, barons, and citizens of London, met in St. Paul's churchyard on the 11th day of October—deposed the chancellor, William Longchamp, bishop of Ely, and made Walter, archbishop of Rouen, chancellor in his stead ; and the same day the said earl and archbishop, and other the king's justices, *granted to the citizens of London to have their community.** And the *same year* (so that the grant was not the immature resolve of a single day),

* Et comes Johannes et fere omnes episcopi et comites Angliæ eandem die (scilicet, tertia die post octavas S. Michælis) intraverunt Londonias, et in crastine prædictus Johannes frater regis et Archiepiscopus Rothomagensis, et omnes episcopi et comites et barones et cives Londonienses cum illis convenerunt in atrio ecclesiæ S. Pauli,

the earl of Moreton and the archbishop, and almost all the bishops, earls and barons of the kingdom, swore firmly and stedfastly to defend and preserve the community, so long as it pleased the king.*

“The *community* thus granted to the citizens,” says Dr. Brady, “was a *select number* for the better management of the affairs of the city; for no doubt the citizens had hitherto been accustomed to meet promiscuously in St. Paul’s churchyard; and to avoid confusion for the future, it was desired by themselves, and thought requisite by the earl Moreton, the chancellor, and the king’s justices, that they should have such an establishment, the better to assist them in their seditious practices, and for the more advantage of the citizens; otherwise, why should the citizens desire it, and the nobility be compelled to swear to the defence of it? The citizens who were of this constitution swear fealty to the king, and also to his brother

et accusabant prædictus cancellarius, &c. Eodem die comes Moretonii & Archiepiscopus Rothomagensis & alii Regis justiciarii concesserunt civibus Londoniarum habere communam suam.—*Hoved., Annales*, p. 702.

* Et eodem anno comes Moretonii et archiepiscopus Rothomagensis et fere omnes episcopi et comites et barones regni juraverunt communam illam firmiter et inconcasse se servaturos; quamdiu domini regi placuerit.—*Ib.*

John, earl of Moreton, against all men, if he should die without heirs,* and some obligation there was, without doubt, to assist in war, as well as there was upon the communities of other nations,† if earl John, and the

* Et cives Londoniæ juraverunt fidele servitium Domine Regi Richardo et hæredi suo; et si ipse sine prole decessisset, reciperent comitem Johannem, fratrem Richardi regis in regem et dominum. Et juraverunt ei fidelitatem contra omnes homines salva fidelitate Regis Richardi fratris sui.—*Ib.*

† According to Duchesne, the communities of the cities and boroughs of France were to send both horse and foot when summoned. In respect of the liability of the men of London to the same service, it is to be noted, in doubt of Dr. Brady's supposition, that it would have been an infraction of a fundamental immunity, hardly likely to have been imposed or acceded to at such a time, if the citizens were to be the stepping-stone to an usurped throne. Nor, if any such liability had been a condition annexed to the charter on the part of the citizens, would there have been any necessity for the indemnity against the recurrence, by example, of such military service at a later period. The citizens having assisted at the siege of Leeds Castle (co. Kent), a charter of the 12th Edw. II sets forth, "that the mayor and the good men of the city of London, *having of late done the king service with armed men, &c., going with him through divers parts of the realm*, the king, willing to indemnify the said mayor and citizens, granted to them, for him and his heirs, that the aids so done should not be prejudicial to the said mayor and citizens, and their successors, *nor be drawn into consequence or example.*" The guarantee was ratified by the first charter of Edw. III, which declares that the said citizens, from henceforth,

bishops and barons of his faction, could have had the opportunity of using them."

It is a circumstance remarkable in itself, and one, perhaps, that might be held to bear out a probability of Dr. Brady's imputation, that there is not known to exist any formal record of this constitution, nor do the city authorities appear to have been anxious, at any time, to claim privileges, by any subsequent *Inspeximus* charter, so or at such time granted,

shall not be compelled to go or send to war out of the city."

It is clear, therefore, that no such liability had theretofore attached to the citizens; and if any had been consented to in aid of any sinister views of the earl of Moreton, it must have been by private compact, savouring very much of treason to the reigning and absent monarch, which the subsequent loyalty of the same chief magistrate will hardly warrant. Judge Forster, in his discourse of Crown law, stands up for the royal prerogative of impressment; but an exemption to the citizens from warring out of the city, was appurtenant to their burgage tenure; and by the feudal system, the citizens were bound only to the defence of their own walls (*Wright's Ten.*, p. 205). To this elemental principle, the extensive armaments furnished by the city to Q. Elizabeth, and during the civil war, afford no counter testimony; for though savouring very much of compulsion, they were yet voluntary concessions to the circumstances of the times—in the former case stimulated by a gallant loyalty, which casts the Victorian civic era into the shade.

The exemption from "waging battle," guaranteed by the charters of H H. II and III, which Dr. Hughson puts

though it can hardly be believed that any concession, the matter of which was made the occasion of so formal and public a compact, should, contrary to custom, not have been reduced to the written form of a record. In the wilful suppression of such a document, however, only can be founded a reflection, probably disadvantageous to the citizens of that day; for there is nothing extraordinary in a public confirmation of privileges, by oaths or

forward as "a positive dictum against the impressing of her citizens" (*Priv. of Lond.*, p. 127), seems not to have any reference to the subject. In missing the mark, perhaps Mr. Malcolm is the nearer to the true interpretation: "The citizens of London," he writes, "were not to 'wage battle,' or, in other words, *were not to be rebellious and riotous, and discharge themselves of the pleas of the Crown*" (*Lond. Rediviv.*, v. iii, p. 536)—an explanation which, he adds, "is readily to be understood." If it be so, why then—

" ——— other arguments are all
Supposures hypothetical."

But the misconception is not extraordinary in an expositor, who, in the succeeding line, is aghast at the awful irresponsibility of the citizens, "*to be acquit of murder*"!

The freedom from waging battle guaranteed by the city charters last mentioned, seems an exemption from the Norman trial by combat, in which the appellee of felony "wages battle" in defence of his plea of *not guilty* (*Glanv.*, l. 14), the citizens preferring an adherence to their Saxon custom, of trial by compurgators, and the improvement upon that model preserved to us, in the time-honored "trial by jury."

other supposed means of assurance; nor does there appear any thing very questionable in the compact entered into between the earl of Moreton and nobles, and the citizens,—on the one part, “to support the communia so long as it pleased the king:” on the other, of allegiance to the absent monarch, and, in default of issue of him, to the succession of the earl;* upon which compact, Dr. Brady

* The earl’s “treason” at this time (however he might afterwards have become involved in designs at the Crown, when he thought there was little chance of the return of the king his brother) seems to have been confined to what he might consider his well-founded presumptive right, which historians generally have failed to recognize. Thus, we read that “John succeeded his brother Richard, to the prejudice of prince Arthur, son of Geoffrey Plantagenet, elder brother of earl John, who was the next heir of course” (*Chron. Hist.*, v. I, p. 31). And again: that “according to the right of hereditary succession, the crown should have descended to Arthur, the son of Geoffrey, who was John’s elder brother, and whom Richard had on many occasions declared should be his heir” (*Civ. and Eccl. Hist.*, v. I, p. 131)—opinions which are more or less entertained by other authors (*Carte*, v. I, p. 744; *Lingard*, v. III, p. 1; &c.)

Without urging the self-evident argument, that a succession, if so much “of course,” required no such repeated declarations of the king to authorize it, the declarations in themselves bespeak the real case—that the law of collateral successions, so far from being settled as now understood, was then a question of argument, arising out of the different methods of computing the degrees of con-

appears to have formed his sinister view of the matter. Still, in default of explanatory cir-

sanguinity by the civil and canonical rule. Thus, says Blackstone, "in the title to the crown especially, we find frequent contests between the younger (but surviving) brother, and his nephew (being the son and representative of the elder, deceased), in regard to the inheritance of their common ancestor; for the uncle is certainly nearer of kin to the common stock, by one degree, than the nephew; though the nephew, by representing his father, has in him the right of primogeniture" (*Law Tracts*, v. I, p. 199). King John, who kept his nephew from the throne by disputing this right of representation, did all in his power to abolish it throughout the realm (*Hale, Hist. C. L.*, 217, 229): and somewhat in palliation of his usurpation, it may be remarked, so unsettled had been the question of right, that Glanvil, in such a case, seems only to have declared for the right of the nephew by representation, under conditional circumstances (l. 7, c. 3). In recognizing the earl as heir presumptive, therefore, the citizens, without entertaining treason, might, as a matter of opinion, enter into that view of the succession, from the very circumstance, that it was a matter of dispute among lawyers in whom the succession really lay; and although Rich. I is said to have favoured the right of representative primogeniture in his nephew, prince Arthur, he afterwards took upon himself to negative that right, by bequeathing the crown of England to his brother John. Yet he did not succeed to the whole inheritance, for the provinces of *Arjou*, *Tourain*, and *Main*, in a general assembly of estates, declared for prince Arthur, "upon the custom of those territories to prefer the elder brother's son before the younger brother." Nor, indeed, after all, did earl John accede to the crown of England by descent, for at the ceremonial of his coronation by Hubert, archbishop of

cumstances,* the absence of a record of so formal a character, involving, as it seems, important privileges, and, from the incidents before mentioned, probably the origin of the mayoralty,—appears so extraordinary, as to afford colourable occasion for the argument, either that the whole affair, for some reason, must have been purposely suppressed, or that no such charter had ever been granted, nor such an occurrence taken place: but then a cotemporary historian of credit,†

Canterbury, to avoid generally the difficulty of the case, that wary prelate thought it better that the earl should come in by *election*, and not by *hereditary succession*.—*Matt. Paris*, p. 165.

* In the contest of the Freemen against the Livery for the right of election, *anno* 1650, Mr. Wildman, on the part of the freemen, “craved leave to premise, that those first records which should make out the people’s right, are embezzled, burnt or lost, there being no record in the treasury but since Edward I. For it hath been the practice of several kings to purloyn the Records, that they might with more facility encroach upon the people’s rights: as I remember it was an article against king Richard II, that he had purloyned and destroyed the ancient records” (*London Liberties*, 1682). In the present case, it appears an even chance to whose interest it might have been to suppress evidence—the grantor, or the multitude whose general voice has been superseded by a representative council.

† Roger de Hoveden, author of the *Annals of English History*, was an ecclesiastic and lawyer, two professions then commonly united.

who relates the affair with too many circumstances of exactitude to have been in error, must first be repudiated. Whereas the grant of the "communia" to the city at that exact period, resting upon the credit of the competent historian who records it, finds very considerable support in the fact that, within a very few years, there are evidences of the incorporated government of the city in a mayor and council, nearly a century earlier than the record of the communia in the city books; and for which there is no other occasion or date assigned as the origin or commencement, nor does any appear so probable as that mentioned by Hoveden to have taken place within the precise limit of time, when the mayoralty seems to have superseded the government of the bailiff.

In the 2nd of John (anno 1200), a council of thirty-five citizens is found associated with the mayor, sworn with him to maintain the laws or assizes in London;* and this body,

* Anno 2 Joh. R. Dorset, custos. This yere were chosen, be wise men of the cite xxxv. men, and sworne to mayntene the assisis in London.—*Arnold's Chron.*

3 John. Will. Fitz Alice
Simon de Aldermanb'y, Custodes.

This same yere be the avyse of wyse men of the citee of London that were chosene xxxv. men which were sworne

denominated indiscriminately the "council of the city," and the "council of the mayor," seems to be the original of the common council; and the same (increased by a trifling addition of members) with the "commoners"* of the communia of mayor, aldermen and

to holde and mayntene, with the maire, the *assysis*.—*Chron. of Lond.*, *Harl. MS.*, 565.

Assise (*asseoir*, *assideo*, *to sit together*), is the Norman term for a "court or assembly of knights, and other substantial men, with the bailiff or justice—in which, whatever is done ought to have perpetual force (*Grand Coust. Norm.*, c. 24, 55). Littleton mentions the word *assise*, as signifying an ordinance or statute so enacted; and refers for illustration to some of our early laws, viz. the "assise of novel disseisin, and mort d'auncester"—the "assise of bread and ale"—the "assise of Clarendon"—the "assise of the forest"—the "assise of arms"—the "king's assise, or view of frankpledge," &c.; "and these be called assises because they set downe and appoint a certain measure, rate or order, in the things which they concerne" (*Cowel*, *in voce*). Hence may be gathered the nature and powers, upon a reduced scale, of a council of citizens invested with the enactment of bye-laws, and associated with a chief ruler, for local government.—*Vide p. lxi, n.*

* In early times, and down to a comparatively modern period, the common councilmen, as representing the commonalty, were called the commoners of the city (*Norton, Com. on Lond.*, p. 396)—upon the same principle, apparently, as the members of the lower house of parliament are termed the commoners of England. By synthesis, however, the representative body became *the commonalty*, and thence, by analysis, a distinct body from the citizens, as "mayor, commonalty and citizens."—2 *W. & M.*, *sess. 1*, § 3.

commonalty, which, early in the reign of Edw. I, is recorded in the city books.

Dr. Brady, referring to the time of Edw. I, mentions the *Communia*, *Commune*, or *Community*, as composed, "besides the mayor and aldermen, of a deputed council of *forty* members, namely, two for each ward." This arrangement would give *twenty* represented wards; but the record of the 12th Edw. I numbers *twenty-four* wards, and a commonalty of *forty-four* members;* which, in res-

* In the 12th Edw. I (1284), the "*Communitas*," or "*Commune concilium* of the mayor, aldermen, and commonalty," was composed as follows :

1. Ward Fori, or Foris . Stephen Aswy, *ald.*
2. Lodgate and Newgate, Will de Farndon, *ald.*
3. Castle Baynard . . . Rich. Aswey, *ald.*
4. Aldersgate Will. de Maiener, *ald.*
5. Bredstrete Ducan de Boteville, *ald.*
6. Queenhythe Simon de Jadestock, *ald.*
7. Vintry John de Gisors, *ald.*
8. Dougate Greg. de Rokesley, *ald.*
9. Walbrook Tho. Box, *ald.*
10. Coleman Strete . . John Fitz Peter, *ald.*
11. Bassishaw Rad. le Blound, *ald.*
12. Cripplegate Henry Frowick, *ald.*
13. Candleweye Strete . . Rob. de Basing, *ald.*
14. Langeford Nich. de Winton, *ald.*
15. Cordewan Strete . . Henry de Walleys, *ald.*
(*mayor*).
16. Cornhill Martin Box, *ald. (sheriff)*.
17. Lime Strete Robert de Brockesley, *ald.*
18. Bishopsgate Phillip le Taylour, *ald.*

pect of the number of aldermanries or wards, exactly corresponds with the assessment to

19. Aldgate John de Northampton, *ald.*
 20. Tower Ward Will de Thadestock, *ald.*
 21. Billingsgate Wolman de Essex, *ald.*
 22. Bridg Ward Jos. de Achatur, *ald. (sheriff).*
 23. Lodingeber Rob. de Arras, *ald.*
 24. Portsoky Prior of the Holy Trinity at Aldgate, *ald.*

The "Commoners," or "Commonalty," forty-four in number, returned by the "*probi homines*" of the wards, were as follows :

Elias de Honilaue	Geff. de Hundeditch
John de Coiffier	Martin Lupus
Rob. le Ponner	Tho. Cross
Gilb. de Dinton	Edm. Ham
Henry de Keyley	Nich. Sohadriceo
Henry le Coiffier	John de Chalfhonte
Henry Beling	John the Clerk
John de Cestrehance	Will. de Preston
Richard Pocerell	Fulck de St. Edmund
Will. de Beverlick	Tristram de Cleverell
Radus de Bemnill	Walt. de Finchingfen
Henry de Hereford	Matt. le Chandler
Peter Cosin	Will. de Kelwydon
Thomas Box	Hugh Yatun
Will. Grateshore	John Skipp
Rich. le Campis	Tho. le Conners
Tho. de Stanes	Henry le Wale
Rob. le Surgelon	Lancel de Pocter
John le Poit	Benedict de Hakence
Osbert de Suffolk	John Wandry
Radus de Barkeney	Walt. Hansem
Radus de Paumer	Edm. Crontemars.

Lib. Alb., fo. 116.

the tallage in the 14th Hen. III (1229-30)* about half a century earlier, within thirty years of the date when the council is first mentioned, and the same most probably at that time; so that, if elected out of the wards, it is a difficult question upon what principle of arrangement the number thirty-five may have been returned.

As a deliberative body of representative citizens, this council superseded the general folcmote, or assembly of the householders in freepledge, by conceding to the citizens, as it seems, the earliest approach to a legislative and self-government, under the form that it at present exists; for, as yet, the mayor was appointed by the king, and the sheriff by chart. Hen. I, *the only elected officer*, to whose appointment one of the three chief an-

* Tallagium Wardarum Londoniæ (*Mag. Rot.*, 14 Hen. III, m. 1, b.) Three only are identified by name, viz. Fori, Warda de Will. filius Benedicti; Bassishag., and Portsoken,—the remainder are described as the wards of Andreas Bukerel; Michæl de Sancta Elena; Jocus filius Petri; Robertus filius Johannis; Johannes Viel; Ace le Mairener; Rogerus Blundus; Stephanus le Gras; Johannes Waleran; Warinus filius Nicolai; Ricardus de Russye; Ricardus Raynger; Radulphus Sperling; Radulphus Stepering; Gilbertus fil. Fulconis; Walterus de Insula; Johannes Travers; Petrus filius Rogeri; Jacobus Blundus; Rogerus Burserius; Johannes de Solaris.—*Madox, Hist. Exch.*, v. I, p. 709, n.

cient folcmotes is recorded to have appertained.* And here an enquiry suggests itself, upon which seems to turn the whole of the question of elective right, which in after ages became the unceasing subject of dispute—firstly, as to the nature of the “Communia,” which so completely changed the quality of the elective rights, and of citizenship: and, secondly, whether subsequently-granted privileges, and rights of elective nomination or appointment, were not, in fact, conceded conditionally to the then existing state of things, and without reference to circumstances, which had been superseded antecedently to the grant. The affirmative of the latter question is found in the practice upon record,—and the negative, in upwards of two centuries of popular discord, until, as liverymen, with that guarantee of discretionary prudence, the time had arrived for opening the franchise generally to citizens so qualified.

Upon the nature of the grant to which the second question is contingent, Dr. Brady observes that, when a particular body of individuals were incorporated in a town, it was said to have a *Gilda* or *Hansa Mercatoria*; but when a whole town itself was incorporated, it

* Ante, p. cxxxvi, n.

was said to have a community, "communia, commune, communitas," or a representative faculty.*

A communia, therefore, is an incorporation, upon the principle of a general merchant gild, and differing from it more in name than in fact; for, upon comparing the existing city charters of liberties with those granted to other cities at

* Treat. on Cities and Boroughs, p. 30. Mr. Madox observes that the term Communia was not used in England until after the Conquest, and that it passed from Normandy (*Firm. Burgi*, p. 35). About the time to which attention is directed, it seems to have been the term in use for corporate privileges, granted by our monarch to his Norman possessions. Thus, in the 4th John, the king granted to the good men of Danfront, that they should have a *Communia* in their town, and the Banlieu of it (*Pat. 4 Joh.*, m. 3). And in the year following, he granted to his burgesses of Caen, that they should have a *Communia* at Caen, with all the liberties and free customs belonging to a communia (*Pat. 5 Joh.*, m. 8). In England, in exception to all other places, London alone seems to have retained the term. In the long list of letters patent granted by Richard II (anno reg. 10) to the cities and boroughs, as security for their loans to him, London is the only place so addressed: that to Winchester is addressed—"Major, Ballivi & Probi homines Civit. Regis Winton'"; Norwich, "Ballivi & Probi homines Civit. Norwici"; Hereford, "Major & Cives Civ. de Hereford"; York, "Major, Aldermanni & Probi homines Civ. Eborum"; but London, first on the list, is addressed to the "Major, Aldermanni & *Communitas* Civitatis Regis Londoniæ" (*Rymer, Fæd.*, t. iii,

the same respective periods, there appears no peculiarity of grant in favour of London,—the same privileges are conveyed in nearly the same words; and those granted to the citizens of Winchester, shortly previous to the grant of the *Communia* to the citizens of London, have express reference to citizens of the merchant gild;* and a charter of liberties shortly

p. iv, p. 133). The 4th chart. of Hen. III, anno 1246, regis 31, first mentions the mayor and commonalty, and recognizes their corporate acts under a common seal; yet seven years later, when the sheriffs were commanded, by writ out of the Exchequer, to distrain the *Communia* of the city for Queen gold—[distringant *Communam Civitatis Londoniæ*—*Hist. Exch.*, v. I, p. 241]—it would seem that the writ did not lie; for in the following year, the sheriffs were commanded by the same authority to distrain "*Cives Londoniæ*" for the same amount (*Vide antè*, p. lxxxiii, n.) Mr. Madox observes, that the term "Corporate Community" was not used in writs till the time of Hen. VI.—*Firm. Burgi*, p. 27.

* *Carta civibus Winton' concessa*, A.D. 1190, an. 1 Ric. I.—Ric. Dei gratiâ, &c. Sciatis nos concessisse civibus nostris Winton' *de gildâ mercatorum*, quod nullus eorum placitet extra muros civitatis Winton' de ullo placito preter placita de tenuris exterioribus, exceptis monetariis, &c. Concessimus etiam eis, quod nullus eorum faciat duellum, &c. Hec etiam eis concessimus, quod omnes cives Winton' *de gildâ mercatorum* sint quieti in theloneo, et lestagio, et pontagio, in feriâ et extra, et per portus maris, &c.; et quod nullus de misericordiâ pecunie judicetur, nisi secundum antiquam legem civitatis quam habuerunt tempore antecessorum nostrorum, &c. Et si quis in totâ

afterwards granted to the citizens of Norwich, conceded to them, in general terms, *all other liberties and free customs enjoyed by the citizens of London*;* so that, in the absence of our own records, without revelling wildly in historical theorems, we might be free to sup-

terrâ nostrâ theloneum vel consuetudinem ab hominibus Winton' *de gildâ mercatorum* ceperit, postquam ipse à recto defecerit vicecomes de Suthant' vel prepositus Winton' namium inde apud Winton' capiat. They were also to be free from Jeresgleve and Scotale.—*Rymer*, v. i, p. 50, ; ed. 1816.

* *Libertates civibus Norwic' concessa* A. D. 1194, 5 Ric. I. Ric. Dei gratiâ, &c. Concessimus eis etiam quietancium murdri & gawite infra civit. & quod nullus eorum faciat duellum, et quod de placitis ad coronam pertinent. se possent dirationari *secundum consuetudinem civit. Lond'* &c. et quod nullus de misericordiâ pecunie judicetur, *nisi secundum legem quam habent cives nostri Lond'* et quod in civitate illâ in nullo placito sit miskenninge et quod hustingus semel in ebdomadâ tantum teneatur, &c.

Has predictas consuetudines eis concessimus, *et omnes alias libertates et liberas consuetudines, quas habuerunt vel habent cives nostri London'* quando meliores vel liberioribus habuerunt, secundum libertates London' et leges civitates Norwic', &c.—*Rymer*, *Fœd.*, v. i, p. 63, ed. 1816.

A similar clause also occurs in the Lincoln charter, granted four years earlier, dated the same day as the Winchester charter, viz. 14 Mar., 1190, anno regis 1.

Carta priv. Civ. Linc. concessa Has predictas consuetudines eis concessimus *et omnes alias libertates et liberas consuetudines quas habuerunt vel habent cives nostri London'* et leges civitates Lincoln. (*Ib.*, p. 52). Lincoln is mentioned as a merchant gild in chart. anni 1188, 34 Hen. II.—*Ib.*, 40.

pose that the nature of our early privileges may be preserved in the free customs of the citizens of Norwich, and of other cities, whose charters bear reference to our early civic constitution. One conclusion, if nothing beyond it, may safely be drawn—that if London may not boast of privileges beyond other cities, equally favoured in the eye of the monarch, she is, by analogy with the charters of those cities conceding her free rights, assuredly entitled to take credit for nothing less; yet Mr. Norton is of opinion, that there is no trace of any mercantile incorporation of London, nor of its ever having been a general mercantile gild, though gilds, both mercantile and territorial, were common enough within it: and yet that this city is universally considered as one of the oldest in England.*

The same author carries his objection still further, for, even supposing the incorporation to be proved, he denies any special circumstances attending the quality of its citizens. "It is impossible to suppose," he continues, "that the erection of a *community*, or, strictly speaking, a *TOWN corporation*, could, any more than that of a gild in a town, deprive

* Com. on Lond., p. 34.

the original inhabitants, and their *heirs* and *assigns*, of their *free rights as citizens, derived from actual tenancy*,; and those who would endeavour to prove, by authentic evidence, that genuine corporate privileges were originally granted to citizens in any other capacity than as mere tenants or residents, will make the attempt in vain." *

* Com. on Lond., p. 35. Mr. Norton seems to have no idea of any other than the mere right of territorial jurisdiction; yet, singularly enough, he calls in aid the very evidences that controvert his position:—"There can be no doubt," he says, "that the engrafting a *commercial* constitution on the aggregate corporation of cities and boroughs *originated in usurpation*; and most probably took its rise in the following way. It was the ancient practice in the Saxon times, to enrol all the dwellers in towns, as well as throughout the rest of the kingdom in frankpledge, either as free householders, or as inmates at the leets. *This would make them citizens, as it were, of that leet. When a whole town became one associated body, apprentices, who, as inmates, were before in pledge within the city, would of course become entitled to enrolment in the civic community*: accordingly we find, from the very earliest records in the Town Clerk's office, of enrolments of citizens in London (*Lib. Ordinationum, temp. E. I., fol. 143 et seq.*; *Stat. Civ. Lond., 13 Edw. I.*), that apprentices to tradesmen were enrolled *upon having served their time*. Being thus admitted as members, they naturally came to be considered as representing true citizens (which they certainly did not in the original and full sense of the word, nor do they to this day in the city of London). At length, as scarcely any resided in such towns but tradesmen and their inmates, the established mode of

Without reviving any question upon the nature of those "genuine corporate privileges," dependent only upon the mere act of residence in freepledge*—or speculating whether, in fact, the communia granted to the citizens by the instrumentality of the earl of

making free citizens began to be grounded on the absolute requisition of passing, actually or nominally, through a trade. In like manner, those towns which could only trace their title to a *mercantile gild*, and not to a *community* in any other sense, adopted the same mode of supplying their associations; and since their trading privileges extended to nearly the whole of the inhabitants, the gilds would be co-extensive with the towns; and thus, that which was originally but a merchant guild, would be converted into a town corporation."—*Ib.*, p. 34.

The fallacy of the theory seems to be, in assuming to the "citizens of the leets"—(frankpledges, householders and inmates)—circumstances that appertained only to, and originated in, the special trading freedom of the civic community; to which the entire system of apprenticeship, enrolment, and corporate admission, had sole and direct reference, independent of the leet jurisdiction, services, and franktenure, which have been before stated (*antè*, p. lv.) The enrolments, *temp. Edw. I.*, afford satisfactory testimony, that the *commercial constitution had not only then been engrafted, but was in mature operation.*

* *Antè*, p. lxi. If, by a privilege granted, is to be understood exclusion against all those not so favourably excepted, the "first grant of the charter of London"—the Conqueror's charter, which greets "all the burgware within London, *French and English*," seems as free from restraint as might be desired, in respect of the "*genuine corporate privileges*" to be thence inferred.

Moreton, was the erection of the commercial community, or of the nature of a general merchant gild, in common with the rising custom of the age,—or whether London had or had not the “free customs belonging to a communia,” at a time when they were enjoyed by other cities of the kingdom, whose charters, after special grants, refer to London as the standard generally, whereby all other their undefined liberties might be claimed, it is certain that the communia, or its representative faculty, did supersede the direct political rights of the “citizens of the leets,” and that a *special freedom* being found, by the very earliest record of the city books, somehow or other to be in operation—but how or when created no record tells—the entire quality of citizenship had become changed, the “citizens of the leets” were “foreigners” in respect of the civic community,* and thence arose a dis-

* Nothing, perhaps, will better illustrate the position, that residence did not constitute citizenship, than the act of parties themselves, who must have been “citizens as it it were of the leet,” in respect of their dwellings, still disclaiming citizenship by its consequences.

In the second of Edward II, John de Bloxham exhibited his petition to the king, stating that *he was not a citizen of London, nor used merchandize there, nor had any certain dwelling in the city, except a house which he had hired for a term of years, so that he ought not to contribute to the common tallages assessed upon the city, nor*

inction even in the quality of the frankpledges of the leets themselves,* which, extending to their general meetings, when upon extraordinary occasions they were yet so assem-

ought his goods and chattels to be taxed with those of the citizens: that nevertheless the citizens of London had taxed his chattels which they had found in the city, towards the quinzime granted to the king by the city out of their goods, and intended to levy xx marcs upon his chattels to the said tax arbitrarily and unjustly. Whereupon the king, by his writ, commanded the barons of his Exchequer to call before them such of the citizens as they should think fit, and hear what could be offered on the part of the said citizens and the said John, and to do right to John upon his case. Pas. Brev., 2 Edw. II, r. 65.

In like manner John le Chaundler, by his petition, shewed that, although he did not constantly reside in the king's city of London, *nor exercised merchandize there; nor did in any sort enjoy or use the liberties or free customs of the city as a citizen*, whereby he might be subjected to the Tallages assessed upon the city; yet the mayor and sheriffs of London caused his goods and chattels within the city to be tallaged to the quinzime granted to the king from the cities and boroughs of England, and distrained him to render Tallage to the same, to his great damage. Whereupon the king, by his writ, commanded the barons of his Exchequer, that if it evidently appeared to them that John did not constantly reside in the city, nor exercise merchandize there, nor enjoy the liberties and customs of the city as aforesaid, then they should discharge him from the tallage assessed upon him, for the cause aforesaid.—Tested, *apud Kenyngton, 3 Maii, an. Reg. secundo; Trin. Brev., 2 Edw. II, r. 79.*

* Antè, p. lxxiii.

bled in folcmote, gave occasion to the remark of Fabyan and other chroniclers, that the assemblages at Paul's Cross did not represent the citizens of London, although warnings and proclamations repeatedly issued enjoined, under severe penalties, the absence of those not qualified to be present; and hence may be inferred a valid inducement for their total abolition. Indeed the scanty notices of these assemblies to be found in the Chronicles, shew them in the decline of their active power, disputing the elective privilege with the aldermen and council, rather than exercising the right—of which an advocate of the multitude in that behalf, nearly two centuries back, declared no evidence could be discovered.* Nor, unless the elective mayoralty

* Antè, p. cxlvii, n. • The few folcmotes (*immensa communitas, immensa multitudo civium*) mentioned by the chroniclers, other than the three periodical assemblages before stated (*antè, p. cxxvi, n.*), appear to have been called together for extraordinary purposes, and shew them (at the time when they are assumed to have been staid electoral bodies of citizens) the mere vehicle of a demonstration, in the hands of whoever had the tact or influence to wield the multitude—and more frequently against than with the local power, which perhaps occasioned Manwood to describe a folcmote, as a “court holden in London, wherein all the folk and people of the city did complain of the mayor and aldermen for misgovernment.”

The assembly referred to by Manwood, in illustration

had, in fact a commencement earlier than that of the communia, or the representative system which superseded the general voice, is it probable that the election of mayor ever

of his definition of the term, took place in 1256, 40th Hen. III, directed by the king himself to be assembled, "on the next holiday following" at Paul's Cross, before John Mancell, one of his justices, to hear complaints of the citizens against the mayor and aldermen. The affair ended by the removal of the mayor and several aldermen, and the appointment of a *custos* and *sheriffs* by the king. It is related at some length in Grafton (*Chron.*, p. 130), and carries the appearance of one of those schemes towards his "dearest beloved citizens," by which the king, in the words of Matt. Paris, "*abrasit impudentur pecuniam*"—shaved them impudently of their money.

Two years afterwards, in 1258, on the 6th November, the king came to Paul's Cross, where by his command was assembled the *Court of Folcmote*; when the king, fearing rebellion of his nobles, did, according to former ordinances made, ask license of the *commonalty of the city* to pass the sea; and promised there, in *the presence of a great multitude of people*, by the mouth of Sir Hugh Bigot, his chief justice, that he would be good and gracious lord unto the city,—*when the people for joy made an exceeding shout*" (*Grafton, Chron.*, p. 135). An observable distinction seems to be drawn between the "commonalty of the city," of whom the king asked license, and the "great multitude of people" in whose presence the ceremony was performed.

Earlier than these, in the 8th Rich. I, we obtain the glimpse of an assembly, to which it is proposed, by certain advocates of popular rights, that the elective mayoralty should have been confided.

In the year 1196 William Fitz Osbert, or William *with the long beard*, the popular leader of his day, and cause of incessant annoyance to the "nobiles," or aldermen,

was in the general folcmote of assembled freepledges—other than it may be said to have been so by representation, although the election may have been there made by the electoral body, in presence of the full assembly; for it is little in accordance with that period of our history,

called a folkmote, "*as he was wont to do*," in St. Paul's churchyard, and there addressed a forcible and energetic discourse to the assembled people, inviting them to defend their cause by rallying round him, as the protector of the poor (*Neubrigensis*, p. 562). Fifty-two thousand citizens, says the same authority, were enrolled by name as his adherents or followers, all arrayed against the rich and noble of the city, who were compelled to watch in arms, day and night, for the purpose of protecting their wealth, their honor and their lives, against this confederacy.—*Rot. Cur. Regis*, v. I, *Introd.*, p. xv.

The following seem to indicate the more direct purpose and utility of a general assembly, when there were no other available means of disseminating information than by *proclamation*—and this, the latest object of the legitimate folcmote, survived, when all direct electoral rights are known to have been otherwise invested.

In 1259 (43 Hen. III) the king commanded a folcmote to be called at Paul's Cross, and ordered the mayor, that every stripling of twelve years and above should the next day be sworn before his alderman, to be true to the king and his heirs, king of England.—*Grafton, Chron.*

In 1299 (27 Edw. I), when the king confirmed the great charters, they were delivered to the sheriffs of London, that they might be read openly before the people. This was accordingly done at Paul's Cross, in the presence of a great assembly there met for that purpose.—*Hollingshead, Chron. ad an.*

to believe that the *custos civitatis* (by whatever particular title distinguished), known to have been in the absolute appointment of the king, should all at once have been conceded and thrown open to the clamorous decision of a popular assembly,—when the election of sheriff, by charter of a previous monarch confirmed to the “citizens,” seems also, by the earliest records extant, not to have been in the appointment of the general body, nor afterwards, but by representation of the “*probi homines*”—the “*discretiores, sapientiores et meliores Wardarum*”—a delegated or selected few.

One of two positions, therefore, remains to be determined—either that the earliest known state of the franchise was a progressive concession from the absolute appointment of the king, over the governed; or it was a violent and an almost total disfranchisement of those free rights of self-government, which are assumed rather than proved to have existed: and while it cannot be passed over, that the right of independent government does appear, at a very early period, to have appertained to the associated *reves* (barons of socs, aldermen),* the same rights at no time

* Antà, pp. lvii, cxvii. With this arrangement, the definition of a folcmote by Sir Henry Spelman does not seem inconsistent: he describes the antient folcmote as a

seem likely, either from facts or analogous circumstances, to have centred in the lesser community at large,—comprising, according to Fabyan, “many rabbish and wylde com’oners, entertaining divers and many opinions; and no wonder,” adds he, “for at those days the cytie was inhabited w^t many maner of nacio’s, whiche were then admytted cytezens.”*

Although the fact has been noticed, it has been considered a synonyme that the early city charters, in some instances, grant concessions to the citizens—in others, to the *barons* of London: but the circumstance requires discrimination. The charter of Hen. I grants the elective sherifffdom to the citizens: “*ita quod ipsi cives ponent vicecomitem qualem voluerint, de seipsis*.”†—so, also, are the charters of John and Hen. III in the same behalf, as well as other the city charters; *excepting only* those of John and Hen. III, respecting the elective mayoralty: “*Sciatis nos concessisse et hac presenti carta mea confirmasse Baronibus nostris de civitate nostra*

sort of annual parliament, or convention of the bishops, thanes, aldermen and freemen, upon every May-day; when the laymen were sworn to defend one another, and to the king, and to preserve the laws of the kingdom, and then consulted of the common safety.—*Gloss.*

* Chron., p. 357, ap. Ellis.

† Cart. priv. Civ. Lond’ concessa. 33 Hen. I, per inapex. Pat. 2 Edw. IV. Rymer, Fœd. v. i, p. i, p. 11.

*London, quod eligant sibi Mayor de se-
ipsis*" *—the barons of London are to elect
to (or for) themselves a Mayor of (or from)
themselves, or their own body of members:
and this seems to explain the purport of Fa-
byan's observation, referring to the 25th of
the same king, "that the aldermen then had
the rule of the city, and the wards of the
same." †

* 2 Cart. Hen. III, an. reg. 11.

† Fabyan, Chron., p. vii, p. 50, ed. 1559. Jacob ob-
serves, that "the chief burgesses of London were in for-
mer times barons, before there was a lord mayor, as ap-
pears by the city seal, and their antient charters (*L. D.*
art. Baron). The Seal referred to (destroyed by common
consent, "in a full assembly of mayor, aldermen, and com-
mon council, in the upper chamber of the Guildhall," in
the 4th Rich. II) was circumscribed—"Sigillum Baro-
num Londoniarum."—*Stow*.

By comparing several instruments of the same period,
a principle may be observed which seems to discriminate
to the same end: thus, common privileges are granted to
the "citizens:"

Carta privilegiorum civibus London' concessa, A. D.
1199, 1 Joh.—Joh. Dei gratiā, &c. Sciatis nos conce-
sisse *omnibus viris* London, quod nullus eorum placitet
extra muros, &c. Hoc enim eis concessimus quod *omnes*
cives London, &c.—*Rymer, Fœd., v. i, p. 1, p. 76*.

Letters patent, in which the contributing citizens were
equally interested with the executive, are addressed to the
mayor and citizens:

Litteræ patentes super edificatione & sustentatione
pontis London, A. D. 1201, 3 Joh. Joh. Dei gratiā, &c.

The explanation usually given to these charters, without referring to the express

dilectis & fidelibus suis *Majori et civibus* London' salutem, &c.—*Ib.*, p. 83.

On the contrary, where the general and particular executive were concerned, as the mayor over the whole city, and the aldermen or barons of soes, over the wards of the same, the precept runs—to the “mayor and barons,”—as in the 5th Joh., A. D. 1203, when the king took the Jews under his especial protection, a precept, “Pro Judæis London' manentibus,” is addressed—“*Rex majori & baronibus* London':” and that the mayor and barons were the governing power (and who else than the mayor and aldermen?) appears very clearly from a subsequent passage:—“*De cætero autem Judæos in civitate London' morantes vestræ commitemus custodiæ, ut si quis eis malum facere attemptaverit, vos universaliter eis subsidium facientes eos defendatis; à vestris enim manibus eorum sanguinem amode requæremus, si forte pro defectu vestri aliquid mali eis acciderit, quod absit, &c. Dat. apud Montem fortem, xxix^o die Julii.*—*Ib.*, p. 89.

In the following reign, when, after the battle of Lewes, and the king had regained his position, he required the rebellious citizens to submit themselves to his mercy, the governing portion of them are described as the “community”: “*Cives & Communitas* London', se, tam de vitâ & membris, quam terris & bonis suis omnibus, voluntati Regis submiserunt.”—*Pat. 49 H. III* (1265); *Rymer, Fæd.*, v. i, p. 1, p. 464. Thirty-one of them, including the mayor and many of the aldermen, were severely dealt with. This record ascertains one point of importance, in the definition of a term much misapplied, viz. that while the “community,” as comprising mayor, aldermen and council, were doubtlessly *citizens*, the citizens, in the terms of the record, were *not the community*.

terms, would shew the term barons to imply no more than *freemen*. The case of the barons of the five ports has been cited, and the question asked—who doubts that they were commoners? * The charter granted to them by Hen. III might be referred to in corroboration of the fact, and in marked contradistinction to the charter of the same king to the barons of London: “*Sciatis nos concessimus probis viris baronibus domini Regis de quinque portibus.*” † But, taken in the sense of *free-men* (as the special city freedom is denied by these authorities to have been yet introduced),—unless it was intended to throw open the franchise, further, to every man not a bondman, instead of confining it to that class of frankpledges (tenants of the leets or householders in scot and lot) who constituted the legitimate citizens of the folkmote assemblies,—why should a term so implicative have been used, in preference to the more direct and expressive word “*cives*,” or “*homines Londoniæ*,” employed in other of the city charters and of the same kings, which immediately preceded and followed those in question?

Admitting, that, in the old Teutonic, the

* St. Amand, *Hist. Essay*, p. xciv.

† Cart. 27 Hen. III, Rymer, *Fœd.*, v. i, p. 1, p. 260.

word *bar* did signify *man*—in its more restrained sense *freeman*,* and that, in the Conqueror's time, the word *baron* did comprise the burghers who held their boroughs immediately of the king,† why should we go to the Sanscrit, or other Hindoostanee tongues, to trace a derivation, by proving that *war* and *bar* were synonymous, and quik-*war* meant the *man* of the cow,‡—when the sense of the term at the period it was employed, will give the more correct solution? And if the Norman term *baron*, in the sense of the Conqueror's time, had been of continuance, why was it not so employed in the intermediate charters of general privileges, instead of being disused for nearly a century and a half, to be revived, in exception to all others, in those relating to the mayoralty? The reason is obvious in the fact, that as the feudal system progressed in refinement, the term *baron* became gradually restrained to a greater nicety of distinction: and in a hundred and thirty years after the Conquest, it represented freeholders—tenants-in-chief of the Crown, barons of socs, of which character were the aldermen. Who, then, shall say that the term was not used advisedly, as to the persons to

* St. Amand, *Hist. Essay*, p. lxxvi.

† *Ib.*, p. lxxxix.

‡ *Com. on Lond.*, p. 329, n.

whom the elections were confided, and out of whom the election was to be made? for it may be observed as a general principle of our commonwealk, that the electors and the elected, the governed and the elected governors, were of the same respective grade. The citizens elected citizens sheriffs—the freeholders in the counties elected a sheriff from among themselves; and the same body, entitled knights, afterwards returned to parliament knights of the shire; the burghers returned burgesses, the citizens citizens. *Upon what other principle was the elected mayor confined to the order of aldermen,* if the stated terms of the charter be not the true interpretation? for if the grant had been made indefinitely to the *citizens*, or had implied so much and no more, why should not they (ready enough at all times to oppose any encroachment of authority) have returned *any other citizen* for the king's approval? Yet, in the most turbulent times, there is no such instance upon record; nor does any such general principle in respect of the mayoralty, as that which appertains to the civic qualification for sheriff, seem ever to have been entertained.

The charter of Henry I which grants the elective sherifffdom, also confirms to "the church, and barons and citizens," the quiet

possession of their socs;* a circumstance which, in the marked distinction in the choice of terms employed in the record, could hardly have escaped the notice of the learned Spelman, who observes that the words “barones et cives” clearly draw a distinction between the greater and ordinary citizens—the former term seeming to refer to the better sort, that is, the guardians or aldermen of the wards.† Mr. Norton, referring to the same charter, says—“by the term barons are meant the aldermen, who were so styled in virtue of their ward jurisdiction.”‡ Commenting upon the charter of John, the same author says—“the grant of the barons to choose a mayor, sufficiently shews that *the aldermen were not meant by the term*, as some have supposed;

* *Et cives non placitabunt extra muros civitatis pro ullo placito; et sint quieti de schot & de loth & de danegeld, & de murther, &c. Et omnes homines Londonie sint quieti & liberi; & omnes eorum res, per totam Angliam & per portus maris de theloneo, & passagio, & lestagio, & omnibus aliis consuetudinibus: & ecclesie, & barones, & cives, habeant & teneant & in pace, socas suas cum omnibus consuetudinibus; &c. Et homo Londonie non judicetur in misericordia pecunie nisi ad suam Were, scil' centum solidos, &c.—Cart. priv. Civ. Lond'. concess., 33 H. 1, per inspez. Pat. 2 Ed. IV; Rymer, Fœd., v. 1, p. 1, p. 11.*

† Gloss.; Brady on Cit. & Bor., App., p. 36.

‡ Com. on Lond., p. 369.

for the aldermen *never had* the exclusive right of electing the mayor."* If this could be proved, for the sake of consistency it must be inferred that, between the dates of the two charters, the term had so far depreciated, and entirely changed its character, as to be employed in legal instruments, in the one case, to represent the aldermen in their feudal and original character of barons of socs; and, in the other, the general body of freemen or frankpledges within the city—at a time, too, when, so far from having depreciated, the term baron was acquiring a more selected and distinct application than could possibly apply to the multitude of the citizens; and, confined to the *majores*, was ultimately destined to an exclusively parliamentary signification, as a title of honor; whence the barons of socs and proprietors in fee of a lesser extent than that which constituted an antient "barony," became classed *minores*; and, shorn of a title which had been so restricted, were reduced to the character of the modern freeholder, and to the quality of knights†—an arrangement by which the city socs seem to have become known as aldermanries, by the revival of the Saxon title of alderman to their proprietors:

* Com. on Lond., p. 402.

† Antè, p. cxxvii.

and Henry III,—who, early in his reign, had confirmed by his charters, in the terms of his predecessor, the mayoralty to the *barons*, the sherifffdom to the *citizens*—and later, in other of his public acts,* clearly distinguished between the citizens and the “community” (or legislature of mayor, aldermen and council)—seems to have indicated the total expiration of the term baron to citizens of any grade,—(either as tenants in chief of enfranchised districts, or the still less probable application of a title of honor, in its primitive and generic sense, to the diffusive body)—when he ridiculed perhaps the vain assumption of commercial wealth, by speaking of them as “*illi rustici Londinenses, qui se barones appellant usque ad nauseam.*” †

That the representatives of the antient barons of the city sokes did affect nobility, by assuming to themselves an obsolete character, appears from many little incidents of our history ;‡ and when their influential aid, or the

* Antè, p. clxviii, n.

† Mat. Paris, p. 501.

‡ At a great feast of the serjeants-at-law, given in the bishop of Ely's place in Holborn, in Michaelmas term, in the 4th Edw. IV, the lord Gray of Ruthin, the lord treasurer of England, was placed before the lord mayor of London, who, presuming to have a right of precedence, presently departed with the aldermen and sheriffs, without

power of their friendly alliance, had been sought, it is not improbable that they, or even the more wealthy of the citizens, may have been flattered by a term, in its growing importance, which could only have applied to the one as tenants in chief, under the feudal system; and to the other, only by reverting

tasting of the feast; "and it was registered to be a precedent in time to come" (*Stow*). It has before been mentioned that the mayor of London was assessed as an earl (*antè*, p. cxxiv, n. †, to which add the authority—*Cott. abr.*); but the assumed dignity of the chief magistrate of London, upon public occasions, seems to have arisen from the great importance of his office as head of the metropolitan city, in the event of the demise of the Crown—when it was supposed, during the *interregnum* which formerly was held to intervene, and by the cessation of the powers of the privy council with the king's death, that the whole weight of executive regality for the moment devolved upon the civic mantle, until a successor should be declared; and hence the mayor, assessed as of the highest existing rank of nobility, might very readily, as in fact he did, assume to be the second person in the kingdom. The days of romance have followed those of chivalry; still, upon like occasions, the lord mayor of London is yet considered an essential accessory—and, as a privy counsellor, would be entitled to precedence of the chancellor of the exchequer as such, immediately after knights of the Garter.

Of the aldermen, Petyt observes that, presuming on the title of barons, they, so lately as the time of James I, insisted upon precedence, in *London*, to knights who were of an elder creation.—*MS.*, v. xlv, p. 76.

to the generic term for man.* It is not possible to imagine so great a confusion of terms; and while it must be confessed that the general deficiency of evidence, anterior to the reign of Edw. I, renders it perhaps difficult, not to say impossible, to disprove the special objection, "that the aldermen never had the *exclusive* right of electing the mayor"—otherwise than by shewing who were esteemed to be the *barons* of London, at the time the right of electing one of their number chief ruler, in the place of a custos of the king's appointment, was conceded to *them*,—that they were the barons of socs (or aldermen)—already district magistrates by tenure, and associated civic counsellors of the Hust-

* When the citizens of London (the only laymen summoned to the ecclesiastical synod assembled, in 1141, to acknowledge the sovereignty of Matilda, the rightful heir) remonstrated against the imprisonment of Stephen and demanded his liberation—it was answered that it ill became them, who were considered as *noblemen* in the kingdom, to take part with those barons who had deserted their king.—*Will. Malmesb., lib. ii, p. 189.*

As the governing powers of the city would have been the parties summoned, it seems probable that the *nobles*, barons of socs, or some of them, delegates from their court of Hustings, were the parties addressed. The representatives of the Londoners, upon the choice of a successor to king Cnut at Oxford, in 1036, are termed *Lithemen* of London, à *Liðan, navigare.*—*Lye, Dict. Goth.*

ing, or highest court; the evidence is still more complete, that they, with a select few of the chief citizens, whom they are afterwards found specially to summon at their discretion, did exercise the elective power, and that the same right never did exist in any other body of citizens. The earliest notice to be discovered, so far from proving a popular election by the general body, shews only "the aldermen and chief citizens" opposed in *their choice* by the clamour of the "Commons";* whence it may be inferred,

* In 1266 (51 Hen. III), "a difference" occurred between the magistrates and commonalty concerning the election of the mayor. The aldermen and chief citizens declaring for Allen Zouche; but the commons would have Tho. fitz Thomas, who was then in confinement at Windsor (*Grafton, Chron. ad an.*) Fitz Thomas had previously been mayor, and, with other aldermen and citizens, who, having submitted themselves, life and member, to the king's mercy, were then in *misericordia* for the rebellion of the city (*Pat. 49 Hen. III; Rymer, Fæd., v. i, p. i, p. 464*)—a circumstance quite sufficient to account for his being a popular favourite; as also for the active measures of the rulers of the city to prevent further collision with the king. Fabyan, in giving an account of the "difference" which thus fell out, affords a lively idea of the franchise of the constructive "barons," forty years after the assumed confirmation to them:—"In this li yere," writes the chronicler, "at the chesing of the mayor, certeyne contraverseye fell atween the rulers and the comons of the citee of London, wherfor by the

that thus early a first concession had been made, insofar that the "council of the city" under the "Communia," had been admitted to a share in the selection; yet that the commons themselves had no other direct right, than perhaps to be present as silent or approving spectators at the election made;* for

advice of the mayor and aldermen, Sir Roger Leybourne w^t others came unto Gydehulle, beyng harnessed under theyre gownes; and upon the friday following Halhalowyn called the comons to the eleccion of the new mayor, when the best of the citizens gave the nominacion to Aleyn Zouch, and *dyvers of the others cryed upon Tho. Fitz Thomas, whiche at that time was prisoner at Windsor Castell, wherefore the sayd Roger, with the assistance of the mayor and others, took the sayd rascall and evil-disposed persons & set them into divers prisons.*" —*Chron.*, p. 362, ap. *Ellis*.

* For a very considerable period, the right of the general body seems to have had no further extent, either in the nomination of the mayor or the election of the sheriffs.

In this thre and twentie yere of kyng Henry (III), says Fabyan, before the time of the election of the shrives of London, one Symonde f^{iz} Mary, which before in the sevententh yere of the king had bene in that office, had purchased a commandement of the king, *directed to the Mayre and rulers of the citie, that they shoulde cause him to be elected to that office for that yere following. But the Mayre with the hedes of the citie withstode it, & chose the aforementioned Rafe Ashewy, &c.*—*Chron.*, p. 48, ed. 1559.

In the 31 Edw. I (1303), Will. de Coumb-Martin and John de Burford were *elected sheriffs by the mayor and aldermen*, "in præsentia XII de singulis wardis summonitorum ad eligendum et recipiendum vicecomites

though Fabyan says "the Commons were called to the election of the new mayor," the extent of their privilege is seen in the circumstance, that they were sent to prison for giv-

suos;" *in the presence* of twelve of each ward, summoned to choose and take their sheriffs.—*Rec. Civ., lib. C., fo. 111 b.*

The practice of the early city elections seems very probably to have been retained in the immemorial custom still used by the ancient livery companies, in the election of their master and wardens.

This is annually performed with much ceremony *in the presence*, and it may be with the assent,—but certainly without the option of dissent,—of the assembled liverymen, who have no negative power nor voice in the matter (other than as they may be said to be represented by such of their body as are members of the court of the company, who exercise exclusively the elective power)—than had the citizens of London generally in elections, said to have been made "in the presence of" any certain of their number, or "by the assent of the whole community."

The ancient "order of the Election" of the "Peverers of Soper lane" was thus :

"When the mangerie was ended, the Wardens were to come with garlands on their hedes," and the company were to choose for their three wardens for the year following, "*those upon whom the foresaid gorlondes shallen be sett. And if it please the master to choose one of the company who shall not be present, the gorlond or chaplet to be sent to his home by the Company's beadle.*"

The record of a particular election further indicates the practice :—

"21 May, 1346. All the companions of our Fraternity met together at the abbot's place of Bury, Roger Osekyn

ing utterance to an opinion upon the matter. Indeed the original right of exclusive election in the barons of socs, does seem to have been recognized throughout every shade of the con-

and Lawrence de Halliwell being wardens and purveyors: after which feast and the cloth taken away, the *said Roger and Lawrence chose* John de Stanope and Robert de Hatfelde *to be wardens for the year ensuing*, in the manner as appears in one of our points before made; to which John and Robert, the aforesaid Roger and Lawrence delivered all the money of the fraternity, that is to say 6l. 16s. in silver and gold, and the chalice and the vesture, *in the presence of* Will. Grantham, Will Hanapetide, Tho. Ireland, and John de Bromesford, *who were chosen by all the company* to superintend the accounts and the delivery of the aforesaid Wardens."

The "Ordinatio Piperariorum," or "les pointz que les bons genz de Sopere lane del mestier des peverers, &c.," to which reference is made, bears date anno 1315, the 8th Edw. II; and that they were not singular in regard to elections, the following refers to the Company of Ironmongers:—

"*Ceremony of electing the Master and Wardens.*
—1562. First, it is agreed at this court, that the two wardens, at the dinner (at such time as the Master shall be served in), shall rise to go out, and then shall come in with the garlands, for the Master only, in the chief warden's hands, with the minstrels before them and the beadle; and making their obeisance to the master, shall deliver him the same garland; and there shall remain, and attend by the Master, till the Master hath assayed the garland upon the heads of such of the most worshipful as he shall think meet. And then the Master to receive it again, and set it on his own head. And then the War-

ceded franchise, even to the present day, in the *negative power* reserved to their representatives, the court of aldermen ; for it must be borne in mind, that the rights of the present

wards to depart ; the garland remaining still on the old Master's head. And immediately the wardens to come in again, with the beadle and minstrels before him, either of them having his garland on his head, and one to bear the cup before the chief warden, and to go once about the house ; and after obeisance made, the chief warden to take the cup, and deliver it to the old Master. And then the Master to take off the garland from his own head, and set it on the new Master's head. And then the Master to take the cup and drink to the new Master. And after that the wardens, after due reverence, to depart to assay their garlands as they shall think meet : and then to go out, and to come in again with the minstrels and beadle before them, with their garlands on their heads, and either of them having his cup brought before him, and to go twice about the house ; and then the chief old warden to go and set the garland upon the new chief warden's head ; and to take his cup, and drink to him, and so to deliver the same cup to him. And likewise the younger warden to set his garland upon the other new warden's head, &c."—*Records of the Ironmongers' Company, Lond. Rediv. v. ii, p. 41.*

This "ceremony," still scrupulously observed by the ancient Livery Companies, and called an "election"—had no doubt its counterpart in the great corporate guild of which it was a diminutive representation ; and affords a fair idea of the practice of the early corporation elections, if not even of the custom in elections said to have been made in general folcmote, when, according to Stow, they met on the feast of St. Michael, "*to know who was sheriff and to hear the commandment.*"

electors extend only to the *nomination* of two aldermen to their own court, of whom themselves *elect* one to fill the civic chair.

The "differences" which are observed, throughout the long reign of Henry III, to have attended those civic appointments not absolutely made by the king himself, and which ushered in the reign of his successor, have incidentally been referred, by a learned cotemporary, to the cause suggested at a previous page.* At this period, says Sir F. Palgrave (referring to the early part of the former reign), London contained two distinct orders of citizens: the aldermen, the "majores" or "nobiles," as they are termed in the ancient year-books of the city, the patricians or higher order, constituting, as they asserted, the *municipal communia*, and constantly exercising the power of government. To these were opposed the lower order—who, being subdivided among themselves into two tribes of plebeians, maintained that they were the true *communia*, to which of right the municipal authority ought to belong.† Thus, upon Edward's accession, there were two competitors for the office of mayor, one elected as of old by the "magnates," the other by the lesser commu-

* Antè, p. cllii.

† Rot. Curia Regis, v. I, Int., p. ix.

nity; the dispute terminating by the interference of the king, and the appointment of a Custos by himself.*

Fabyan chronicles the circumstance with the following particulars, which do not convey the inference of much right of choice at that time admitted in the "lesser community":

Anno D'ni MCClxii. In the fyrste yere of kynge Edward the fyrste upon the daye of Symon and Iude, were certeyne *attempts made by some of the citezens to have made such a Mayre as they had lysted*; but for the were dispoyned of their accessaries, they lette for that tyme; whiche in the yere followyne upon the same day tooke further effect.—*Chron.*, p. 121, ed. 1559.

In the following year, the election by the "magnates" seems to have been set aside, at the ceremony of the installation, by a *coup-de-main* on the part of the "citizens." Fabyan continues:

Anno Domini MCClxiii. In this seconde yere of thys kyng and day of Symon and Iude, when Phylp le Tayloure, *whiche before was chosen to be Mayre*, shulde as that daye haue taken his charge in the Guyldhall of London,† *dyvers citezens put him besyde the Maires seatt* and sette therein sir Walter Haruy that the yere before had bene Mayre; for whiche greate rumoure and grudge arose amonge the cityzens: wherfore the matyer was after

* *Ib.*, p. x.

† "Should have been put in the chair at Guldhall, as the manner is."—*Grafton, Chron.*, p. 163.

broughte before the kyng, the whiche herynge the reasons of bothe parties, for so muche as he coule not agre theym, he put bothe the sayde sir Walter and the sayde Phillip asyde, and chase Henry Frowicke for Custos of the citee, the whiche so continued till Candlemas; after whiche tyme by discrete and wise peasible meanes the forenamed syr Walter Hervey* was set in auctorite as Mayre, and so continued the full yere after.—*Ib.*, 122.

In this result, if the king,—who had been looked upon as the “friend of the city,” and through whose instrumentality, in the latter part of the previous reign, the city privileges had been restored,—for the moment entertained the choice of the lesser community, it was with a fatality, proverbial as the smile of princes, to the popular cause. Harvey was speedily encompassed by enduring disgrace;†

* [Henry Waleys, MS.].—*Note, Ellis's ed.*

† Anno Domini MCC lxxiii, 3 Edw. I. In this yere one Walter Harvey, whiche the firste yere of this king, *after long controversy and strife by hym made and continued againste the aldermen of London*, and in the firste yere of the king, was at a folcmote holden at Paul's croce chosen maior of London and continued out that whole yere to the great trouble and heat of the citee, was this yere accused of divers perjuries and dedes done contrary to his othe. For whiche, and for makinge the assemblies of the Commons that favoured him in his evil dedes, he was deprived of his aldermanship and consail of the city for ever, and found suretie of xii honest persons that he should be of good abearing for keeping of the kinges peace within the city for the term of his life.—*Fabyan, Chron.*, p. vii, p. 123; *Grafton*, p. 164.

and it was perhaps then, as a matter of grace, that an enlarged constituency of the *meliores* from each ward were summoned to be present at elections, in total exclusion of any more general pretended electoral rights, and in confirmed establishment of the original government of the Magnates or Reves, when the privilege was again conceded. A series of custodes, however, continued in authority, by the king's appointment, to his 26th year; and in the 18th, upon the accession of Sir John Breton to Ralph de Sandwich, as if in mockery of their suspended rights, the former "called together *the aldermen and six of the better and discreeter of each ward*—and declared unto them how, in the king's absence, he had been appointed Custos by lord Edward the king's son and by other lords; by whom it had been commanded him by an oath imposed upon him, that he should keep inviolate all their liberties and antient customs as the citizens of old were accustomed to have and enjoy—that he should be all things as a Mayor except in name, and that he should have the name of Custos."*

In the 26th of the same king, on Wednesday of Easter week, "*all the aldermen and*

* Lib. B., fo. xxxv. Str. Stowe, b. iv, p. 74.

other honest men of the city'' were before the king at Westminster, and there the king, with his counsel, granted *them* the election of the mayor; and they, the Friday next following, with *twelve men of each ward*, chose Henry de Galeys (Waleys) for mayor.*

In this direct constituency of mayor, aldermen, and a commonalty of twelve from each ward, is seen the utmost extent of the franchise for the succeeding two hundred years. Nor did the number always amount to the same aggregate; for, by subsequent entries, it appears that while the larger districts were represented by a less number, so a proportional and decreasing representative body was apportioned to the lesser wards. In this alterant power is again seen the predominant rule of the aldermen, as representing the original government of the barons of the city socs, or reves; who, while under the provisions of the *communia*, associating in their legislative and electoral functions with a commonalty of citizens, had yet retained sufficient power, not only to direct the proportionate and aggregate amount of such associated representative body, but also to determine the particular persons of whom it

* Lib. B, fo. xxxviii. Str. Stowe, b. iv, p. 74.

should be composed. Yet this undefined aggregate amount of the "better men" of the wards, upon the same principle that the commons in parliament, independently of the "prelates, earls, barons, and other great men," were called the "community of the kingdom"—so were the citizens representing the wards in the councils of the city communia, denominated "the community of the city of London." *

In the 27th Edw. I (1299), Elyas Russell was elected Mayor *per commune consilium majoris, aldermannorum et totius communitatis*; by the common counsel of the mayor, aldermen, and the whole community.—*Lib. C.* 37.

In the following year, Elyas Russell was re-elected Mayor by the aldermen, sheriffs, *et per totam communitatem*, and by the whole community.—*Lib. C.* 51.

In the 23rd of Edward I, burgesses were first summoned to parliament; and in the

* Claus. 29 Ed. I (1301); 1 Edw. III (1327). Rymer, *Fœd.*, t. III, p. 733. Parl. Hist., v. i, pp. 115, 187, &c.

In the last parliament of Edw. II, *an. reg.* 20, in which that unhappy monarch resigned his crown, and thence also called the first of Edward III, assembled at Westminster in 1327, the charters of liberties of the citizens of London were confirmed "*de assensu Prelatorum, Comitum, Baronum, et totius communitatis regni sui.*" And to this parliament, the return of the writ addressed to the mayor and sheriffs of London represented, that "Anketumus de Gisorsio, Henry de Seckford, Reginald de Conductu, Tho. de Leyre, Edmond Cosyn & John Sterte. *Electi sunt per majorem, aldermann. & Communitatem.* London, &c."

28th of the same reign (1300), the representatives of the city of London were returned by the *mayor, aldermen, and six of the better and more discreet men of every ward*.*

In the 29th Edw. I (1301), John le Blund was elected Mayor, *per commune consilium Elye Russel tunc majoris*, and the aldermen there named, and the sheriffs, *per as-*

* Lib. C, 41. By the present extended condition of the franchise, in respect of parliamentary representatives, the "original right of the freemen of London" at large to return them in their own persons, has passed from a political to an historical question. Still, in the latter capacity, it is not too late to remark (however, as a matter of expediency adapted to the progress of the time, the measure might be desirable, and was afterwards conceded), that it had no foundation in precedent right. And in this perhaps unpopular, but well-authenticated fact, is furnished ample reproof of the unlearned sneers of one of the advocates of that measure, not only at the committee of the court of common council, which decided against his petition, but also at the erudite historian, Dr. Brady, whom he, in no measured terms, charged with falsifying and suppressing documents to suit his purpose; expressing astonishment at the "effrontery" of "this man," who would wish to make it appear "that the *whole community* meant a *select few*."—(*Facts and Arguments in support of the Elective Franchise of the Resident Freemen of London, in a Petition from the Ward of Cripplegate Without; by J. Newell, 1830, pp. 44-7.*)

Dr. Brady had, indeed, repudiated, as a popular error, the position which Mr. Newell supported by his miscomprehension of almost every document he cited. "He," to quote Dr. Brady's words in reference to more learned men, "did not truly understand the meaning of the words,

sensum duodecim proborum hominum singularium wardarum; by the assent of twelve of the better sort of every ward (*Lib. C. 62*). In the following year he was re-elected in the same manner; and again in the 31st of the same king, by the aldermen, sheriffs, *ac etiam per totam communitatem*.—*Lib. C. 111*.

In the 5th Edw. II the aldermen and others, citizens of London, on the morrow of S. S. Simon and Jude, presented before the Barons of the Exchequer John Glours,

communitates civium et burgorum—the commonalty of cities and boroughs, which always signified the mayor, aldermen and common council, where they were to be found, or the steward or bailiff and capital burgesses, or, in short, the governing part of cities and boroughs, by what persons soever they were governed, or names and titles they were called and known.—(*Treat. on Cities and Boroughs*, p. 62.)

Mr. Newell claimed "for the freemen of the boasted first city in the world—a restitution of those elective rights common to every other freeman in England, living in cities represented in Parliament" (*ib. cit.*, p. 7). He took his presumed universal right "to be founded on the common law," because he found that, in every city throughout England represented in parliament (except London), the freemen exercised the right of voting for its members (*ib.*, p. 9). "There is not a single city," says he, "out of twenty-four so represented, with the exception of London, where freemen are so disqualified." And then, to prove (or rather to *disprove*) his case, he states the manner in which the right of election was exercised in the different cities of England: and among them—

"In Bath—in the *Mayor, Aldermen, and Common Council*.

London—in the *Livery Companies*.

Salisbury—in the *Mayor and Corporation*.

chosen mayor of the said city by the said aldermen and the community of the said city: Aldermanni Londoniæ & alij cives ejusdem civitatis venerunt hic, modo die Veneris in crastino Apostolorum Simonis & Judæ & præsentaverunt coram Baronibus Johannem Gisors concivem suum, per ipsos Aldermannos & communitatem dictæ civitatis in Majorem Civitatis ejusdem electum, &c.—Mich. Com., 5 E. II, r. 26; Madox, Hist. Exch., v. ii, p. 94.

Wells—in Mayor, Master, and Burgesses and Freemen, who are admitted to the freedom of the seven Companies of the City.”—Ib., p. 31-2.

The remaining cities all differed in the nature and qualification of their franchise; but Bath and Salisbury seem to present an agreement with the early records of London in the same behalf; and Wells, an exact parallel to the extended franchise of London, which Mr. Newell attempted to repudiate as an isolated usurpation.

Dr. Brady's position seems to require no additional support; but the return of the Mayor of London to a writ of summons for a Parliament, to be holden at York in the 12 Edw. II (1319), and quoted by Mr. Newell, may be cited:

To our most excellent prince, &c. John de Wengrave, *mayor of London, the aldermen, sheriffs, and the whole community of the same city, &c.* Your Excellency may know, *we have assigned* our beloved fellow citizens, John de Cherleton, William de Flete and Roger le Palmere, or two of them, and have given to them, or two of them, full and sufficient power, by these presents, to do in this your instant Parlement, to be holden at York three weeks after Michaelmas, what shall be ordained in the aforesaid Parlement by common advice, according to the form of your writ lately to us directed. In witness whereof, we have made these our letters patents to be sealed with the seal of our *community or commonalty aforesaid*. Dated at London the 16th day of October, in the 12th year of your reign.”—*Brady on Cit. & Bor., App.*

In the 6th Edw. II (1312), William Wellesford and John Lambin were chosen sheriffs by the *mayor, aldermen, and twelve summoned out of every ward*. Wellesford dying, his place was supplied by Adam Ludkin, chosen, *per sex et amplius de singulis wardis summonitos*, by six and more summoned out of every ward.—*Lib. D, fo. 3.*

In the 7th Edw. II (1313), Nicholas Farendon chosen Mayor by the mayor, aldermen, sheriffs, *et per communitatem*.—*Ibid.*

In the same year, the sheriffs were chosen by the mayor, aldermen, *et per communitatem summonitam*.—*Ibid.*

In the 8th Edw. II (1314), the mayor and sheriffs were chosen, as before, *et per probiores homines communitatis de qualibet warda*.—*Ibid.*

A collation of the several preceding entries can lead to no other than the one conclusion, that the "*communitatis de qualibet warda*" were the "*probiores homines* specially summoned"; and that by "*totem communitatem*," is to be understood the same persons, who, with the addition of the mayor and aldermen, together "*per commune consilium*," by their common counsel or advice, made the election.

In the contested argument of the relative rights of the freemen and liverymen, in 1650, the learned Mr. (late lord chief justice) Hales, commenting upon the evidence of the city books, observed: "In the record of the 21st Edw. I,* it is said, first, that there were assem-

* "Lib. C, fo. 6."

bled the *whole commonalty*; and then that term is explained by these words—‘*the whole commonalty, that is to say, the more able and discreet men of every ward.*’ And again, the election is said to be made by the commonalty *summoned thereto*; * yet it is said *the said men of every ward did choose.*”† “The precedent,” he continues, “says *they were summoned* from each ward;” and he pertinently asks—“who summoned them? they did not summons themselves? If a summons were to be sent out, that all the richest and all the wisest of such and such a ward should come, what kind of a summons is this? and how shall such persons be judged? But it appears the mayor sent out his process and summoned them. The mayor summoned whom he would, —sometimes six—sometimes eight—sometimes twelve, at his pleasure, and they came and made the election.”‡

Stow affords a record of the practice of former days, as preserved in his own:—The mayor and aldermen (says he) used to meet some days before the day of election of mayor, as likewise of the sheriffs, *as they are wont now to meet*, and to confer together how

* “Lib. C, fol. 113.”

† “Ib., 112.”

‡ London Liberties, 1680, p. 28.

the election should be managed peaceably, without popular tumult and murmur. Hence, *out of every ward they summoned some more discreet and sufficient citizens to make up such a number as to them should seem competent, who were cited by name to be present at the election of the Mayor on St. Edward the King and Confessor's day.* And because many times, on the day of election, people not summoned, crowded into Guildhall, the mayor and aldermen, sometimes by the authority of their offices (as appears by one of their books—*lib. F, fo. ult.*), and sometimes by the king's writ, they caused to be proclaimed on St. Edward's eve through the city, that none should, under a great penalty, come on the morrow to Guildhall at the time of election, unless more specially cited.*

Sometimes, against the time of election of a Mayor, the king himself issued out his letters of proclamation: *quod electio fiat sine tumultu et strepitu populari, et quod nemo intersit qui jus non habeat suffragii*: that the election be made without tumult and noise of people, and that none be present who have not a right of voting. And such an order was made in the 8th Edw. II, for the

* *Lib. D, fo. 3; & Lib. E, fo. 41, &c.*

election of both mayor and sheriffs,—that it should be done *modo congruo et consueto, sine populari strepitu et tumultu*: in the agreeable and accustomed manner, without popular noise and disturbance.*

The letter of Edward II is very precise touching the manner of elections, as they formerly had been practised, in evident agreement with the terms of the city records—as in the aldermen and more discreet persons of the city specially summoned; the king then proceeds:

“ And now we have understood that *some of the popular and plebeian sort*, making a conspiracy among themselves, causing contentions, differences, and innumerable mischiefs day and night in the said city, and making among them clandestine conventicles in private places; and being not called nor summoned, do thrust and mingle themselves of their own accord into such elections, and by threatening and clamour hindering the due making of such elections, endeavour to choose such as for time to come may favour their errors, that their wickedness and defect of congruous government may pass unpunished, &c. We command, that before the time of the election of the mayor and sheriffs next to be chosen, it be publicly proclaimed through the whole city, and firmly to be forbid that none, unless he shall be to this specially called or summoned, or be bound thereto, come thither at the time, nor intrude himself in making the election, nor hinder it in any way on pain of confinement, from which he shall not escape without our special command. And

* Surv. Lond., ap. Strype, v. ii, b. iv, p. 75.

that the aforesaid election be made by the aldermen, and other the more discreet and powerful citizens of the said city, as in the same it hath anciently been accustomed to be done. Dated at Westminster, the 4th July, an. reg. 8.
—*Lib. Horne*, p. 332.

At this point of the argument it will be convenient to suspend the course of the subject, for the purpose of enquiring into the origin and rise of the incorporated crafts, and of their liverymen, electors of London,—the alleged usurpers of a more general franchise, which appears, within the scope of proof, never to have existed in fact, nor antecedently in probability. In this progressive enquiry has been amply shewn the extreme fallacy—so popularly indulged—of an undefined reference to former and early ages, for liberties wholly inconsistent with the condition of society at the time, or the nature of its existing institutions—liberties which have been the gradual concession to the progressive advancement in civilization, and the amelioration in social intercourse and manners; and which could not have existed in an “iron age,” when physical force was the persuasive to conviction, and its prowess the triumph of argument. Nor is it consistent to suppose that, while the onward movement of civilization has been certain as it has been progres-

sive, the personal liberties of the people should have moved in a retrograde course.

Not even to our "free" and comparatively enlightened ancestors of the Saxon race—whose liberties have so popularly been sighed for as the model of unrestrained action and political rights—are to be conceded the freedom of modern times. The privileges of those ancient days, when we are told every *freeman* elected his rulers—even to his king, were fallacies to the great mass of the people, yet in bondage; and, however it may discompose the favourite theory of many, yet it must be remembered, as the result of all experience, that it is only in ratio with the enlightenment of a people that they can be entrusted with, or appreciate and enjoy liberty.

**OF THE
INCORPORATED GILDS;
AND THEIR
LIVERY MEN,
ELECTORS OF LONDON.**

It is perhaps from a deficiency of the knowledge of earlier data, that the historians of London, each following his predecessor, have generally referred the introduction of the Saxon custom of gildating in fraternities, for common purposes, to the reign of Henry I, when it is said the custom became prevalent, after the fashion of the free cities of Italy, for artisans and traders to form themselves into fraternities or gilds for the furtherance of their trade ; of which, says Mr. Madox, the Weavers and the Bakers were the most ancient fellowships and gilds in London.

Little, indeed, is known of the mercantile or trading associations of the Anglo-Saxons, beyond the fact, that there were such institutions among them. In a charter concern-

ing Canterbury, mention is made of the three companies of the citizens within the walls, and of others without;* and Domesday Book records the *gihalla*, or guildhall, of the burghers of Dover.†

Our Saxon ancestors, however, appear to have been associated in guilds, whether, in some instances, united to purposes of trade or otherwise, with the several objects of devotion, or private good will: some of these associations resembled our modern benefit-clubs, in which the members made small stated contributions, every hearth or family paying one penny yearly to be buried at the expence of the fund so raised.‡ By the very nature of constituted society at the time, these guilds would have been neighbourly associations, and might perhaps be confounded with, or taken to have been, a consolidated particular of the gildated districts, or associated subdivisions of frankpledges, which formed the outer limit of the bond of union, by which the whole community of the country was linked together in one common object. From the terms of a law of Æthelstan, it might be inferred that such a consolidation of purposes

* Turner's History, p. 106.

† Domesday, f. 1.

‡ Hicks, Dissert., p. 18.

had indeed taken place—and that an enfranchised district or local gild, and a gildated fraternity, had been identical; a circumstance which may, in a great measure, account for the indistinctness which has prevailed on the subject.* “We have charged,” states the document referred to, “all that are admitted into our gildship by pledges given, that if any one happen to die, every brother of the gild give a loaf,” &c.†

Other societies of the Anglo-Saxons appear

* Without regard to the general applicability of the Saxon word to any community of associated contributors, “it is clear,” says Mr. Norton, “that the term *gild* had no peculiar mercantile signification; for there were many associations, both in the country and in cities, *passing by that name, which were composed of the inhabitants of particular districts* ;” and to make out his case (which, however, only proves one application of a common term), he adds from *Spelman (Gloss., art. “Geldum”)*, that the members of the *borhoses, friborhoses or friburgs*, were termed members of *frithgilds*.—*Com. on Lond., p. 34. Vide antè, p. lvii, n. †*

† L. L. *Æthelst., ap. Wilkins*. At a very early period, the term *gild* seems to have represented a contribution in kind for a common purpose. Keysler and Ihre trace it to the early period of the history of the Goths, when the nation met in honor of their false gods, especially at the winter solstice, every one bringing meat and drink for the purpose of mutual entertainment (*Hampson, Med. Ævi Kal., v. ii, p. 416*). In the early London gilds, an annual dinner, or mangerie appears to have been a primary circumstance of the institution.

to have originated in pious devotion—for God's love, and the soul's need of the members. Here a mass priest was to sing a mass for their living friends, and another for their dead friends. It seems probable, however, that voluntary confederations of every description were even then looked upon with an eye of suspicion ; for to avoid the possibility of misconstruction as to the purpose of its institution, the gild-recipe of a confederation of this description concludes with the pious wish—" We pray for the love of God, that every man hold this meeting rightly, so as we have rightly agreed it should be.*

Founded for objects precisely the same, there are many gilds mentioned by Stow as having been attached to certain churches in London—indeed he remarks that few churches were without them ; some of these, like their Saxon models, were devoted purely to the religious services appertaining to a chantry, and differed from such a foundation, only in the associated proprietorship which constituted them fraternities ; they were supported by a contribution of members for the payment of a priest or priests, and the necessary expense of candles, with other adjuncts for the celebra-

* Hicks, Dissert., p. 22.

tion of masses, obits, &c. These establishments have long ceased to exist; but the cognizance taken of them in the reign of Richard II, when all gilds and fraternities within the city of London, and it is believed throughout the kingdom, were required to certify to the king and council, in his chancery, the particulars of their objects, foundation, and possessions, has been the means of recording interesting particulars respecting them.* Some of them were not confined en-

* *Certif. Guild: Orig. in Turr. Lond.* “ *La Fraternité de nôtre Dame de Salve Regina et de Seint Thomas en Eglise de Seint Magne sur the Pount de Loundres, donet les Mestres sount a present John Sandherst, Walter atte Well, Gilbert Sporire et Estephen Bartelot.*

“ *Be it remembered, that Rauf Capelyn du Bailliff. Will. Double, Fishmonger, Royer Lowher, Chancellor, Henry Roseworth, Vintener, Stephen Lucas, Stockfishmonger, and other of the better of the parish of St. Magnus near the bridge of London, of their great devotion, and to the honor of God and his glorious mother our Lady Mary the Virgin, began and caused to be made a chantry, to sing an anthem of our Lady called Salve Regina, every evening. And thereupon ordained five burning Wax Lights at the time of the said anthem, in the honor and reverence of the five principal joys of our Lady aforesaid; and for exciting the people to devotion at such an hour, the more to merit to their souls. And thereupon many other good people of the same parish, seeing the great honesty of the said service and devotion, proffered to be aiders and partners to support the said lights and the said anthem, to be con-*

tirely to religious services for the soul's repose, but, partaking of the nature of other of

tinually sung; paying to every person every week an half-penny. And so that hereafter with the gifts that the people shall give to the sustentation of the said light and anthem, there shall be to find a chaplain singing in the said church for all the benefactors of the said light and anthem. And after the said Rauf Chapelyn by his testament made the 18 June the year of the said king 23, devised 3s. by Quit Rent, issuing out of one Tenement in the parish of St. Leonard, Eastcheap."

The Book of Chantries furnishes a statement of the affairs of the Gild, temp. Edw. VI. The annual revenue then amounted to 49*l.* 4*s.*, disbursed as follows: To Sir Will. Swanne, priest, his stipend, 8*l.*; Will. Bunting, priest, his stipend, 8*l.* Obits, lamps and lights, 10*l.* 4*s.* 1*d.* To certain poor Brethren and Sisters of the said fraternity fallen to decay, 18*l.* To one of the said Brethren, being prisoner in Ludgate, after 2*s.* the week. To certain of the said Fraternity, 5*s.* 4*d.*; and then remained clear, 47*s.* 4*d.* —*Harl. MS.*

In the church of St. Lawrence Jewry were two Fraternities or Guilds, founded in the reign of Edw. III. The one (of the Holy Trinity) bound themselves to set up a wax light to brenn before a certain Image of the Crucifix; and that all the Brethren and Sisters should come to the said church on the feast of the Exaltation of the Cross, and there present at the Mass and offer a penny, &c.

The other Fraternity was founded in the Honor and Worshipp of our Lord Jesus Christ, of His blessed Moder, our Lady Seint Mary, and of S. Anne, in the yere of the Reygne of King Edward III, after the Conquest the 46. Alexander Sayvyle, William Raymond, Thomas Adam, and William atte Brigge, were the Keepers of this Fraternity of St. Anne.

the Saxon gilds, had regard for the temporal welfare of their brethren in sickness and dis-

One of the articles of this guild declared—" If any of the Company be of wicked fame of his body, and take other wives than his own. Or if he be single man, and be held a common Lechour, or Contehour or rebel of his tongue; he shall be warned of the Warden three times; and if he will not of himself amend, he shall pay to the Wardens al his arrearages that he oweth to the Company, and he shall be put off for evermore. So that the good men of the Company be not slaundered bycause of him.

Provision was also here made for such as fell in mischief by sickness of Body or by Robbery by Lond or by Water, or by Fyre brennyng, or by Elde of Body, or by contek he leese hand, finger, or other member of his body: wherefore he may not work and live by his craft; so that it be not at his affault, no at his desert; but at his defence by Record of his neighbours: And if he have wel and traly paid his Quarterages and other things as the good men of the Company doen; he shal have of the silver of the Quarterages of the Box every week, for terme of his Lyfe x pence halfpenny, in helpinge of his sustinance, he prayinge for al the Company: And at his dying shal have the Light and Masses as is aforesaid.

And if ony man be of good State, and use hym to ly long in Bed; and at rising of his bed, nay wil not work, but wyn his sustenance, and keep his house; and go to the Tavern, to the Wyne, to the Ale, to wrastlyng, to schetyng [shooting], and in this maner falleth poor, and left his cattel in his default for succour; and trust to be holpen by the Fraternity; that man shal never have good, no help of Companye, neither in his lyfe, no at his dethe; but he shal be put off for evermore of his Companie, &c."

These are some of the articles characteristic, not only of this, but of many other gilds, in which the citizens of

tress. Some of them too, and probably the whole, in common with the universal custom of all known religious fraternities, were *liveried Companies* ; * and, excepting that they were

London commonly enrolled themselves about the same period.

An instance of a gild of secular persons, devoted to services strictly and entirely of a religious character, may be cited in the fraternity of All Souls, in the Chapel upon the Charnel, adjoining to the cathedral church of St. Paul, founded in 1379.

This Fraternity met on the eve of All Souls, in the chapel over the Charnel House, and there *Placebo* and *Dirige* were said, with other Orisons, for the Souls of all Faithful departed. On the day of All Souls at morning prayer, when the Bell rung at 7 o'clock, they came together to the church of the Holy Trinity near Aldgate: and so from that place with a grave pace, they walked to the aforesaid chappel, numbering their prayers as they went along and their secret Orisons, pouring them out *vultu cordiali*, with a serious countenance for the living and the dead. And when they had finished their journey they attended one mass for the dead most devoutly; at which mass the Brethren and Sisters honorably performed oblations, and so returned home.—*Stow*.

* Certif. Guild. Orig. in Turr. Lond. In the parish church of St. Stephen, Coleman street, were two guilds. One of our Lady, called the Little Fraternity of our Lady in the church of St. Stephen, in Coleman Street, London. Founded 43 Edw. III, an. 1368, by Will. Molton, Mason, John Lenham, Brewer, John Musbrach, Smith, John Smith, Currier, Thomas Belchamber, Letherdigher, and other good people of the said parish; of their great devotion and in honour of our Lady, to find five wax candles upon one branch, of 31 lbs. of wax, hanging before an image of our

not associated for purposes of trade, nor seem to have been confined to men of a particular craft, they in no material point differed from the gildated mysteries which at sundry times received the royal sanction, both in respect to foundation and livery, in exception to all others. Indeed, a similarity of purpose is prominently observable in the foundation of many, if not most of the early trade guilds of London, which, having obtained royal charters, providing, among

Lady in the said church, upon a beam ; each Brother and Sister paying 12 pence per ann. The deed of foundation ran as follows :

In the name of the hall Trinite, Fader and Sone and Holigost, Amen. In the feste of Seint John the porte Latyn, that is to witen, the seven day of the moneth of May, &c.

Fyrst alle the Bretheren and Sustren everich yer, ayens the self Feste of the Assumpcion of our Ladi Seint Mary, shul ben clothed, of one Sute of covenable clothings that falleth to her estat. But yif ony shall be of the Compaignee because of poortee, ne mey noyght make gree ; yet he shal have atts lest a hode of the Suyte, in token that he is a Broder of the Fraternite. So that he be be holden Broder or Suster of gode condicion and honeste. The which day of the assumption, the foresaid Bretheren and Sustren shul have a solempne Messe, in the honour of the foresaid Mary songen in the church of S. Stephen foresaid. At which Messe, al the foresaid Bretheren and Sustren up peire of two pound wax shulle be present, fro the begynnyng of the foreseyd Messe to the end : and at the Messe in dew tyme, everych Broder and Suster a peny shul offre.

h

other objects, for a perpetuity of succession, exist at the present day. They not only associated themselves for the common purposes of their trade, but with the pious spirit, or, in modern parlance, the "bigotry" of the age, which considered the service of God as an intrinsic part of all the actions and purposes of life—they were also deeply devoted to religious or "superstitious" objects*—not more by rites and ceremonies performed, than by

The which Messe y Songen, al the foreseld Bretheren and Sustren shal go togydren to a certeyn place be her Maistres, which be for the tyme assigned. In the which place *alle schullen ete togydren*, on her own purse, or at leste drinks. And after the etyng and drinkyng (whether hit be) the foreseld Maistres hys accompte for the tyme shal yelde up in gode manner and honest, &c.

The other, the guild of St. Nicholas, of "The gode men of Coleman-street, in nourishment of Love and of Charite among hem, and in help to theym that falle into poverté, &c., was begon in the yere 1369; and ordeyned fyrst, to fyndyng certain Lyghts brennyng before the Image of S. Nicholas in the church of S. Stephen, Coleman-street, in the worshipp of Almyghty God, and hys Moder S. Mary and of al Halwen of Heven and of S. Nicholas, &c.

* One of the objects of the associated "Peveres de Sopere lane," at the formation of their fraternity in 1345, was declared to be—"to maintain a priest to sing for them," each member contributing three shillings and sixpence annually towards such maintenance, and to pay for the dinner or *mangerie* (*Ordin. Piper. de Sop. r lane, Stow*). The Fraternity of Pepperers was dedicatd to the honor of God his meek moder, and of Seynt Antonye

the terms of their original dedication.* These incorporated societies, however, were well adapted for the duties of a trustee—a character (beside the uses abolished by the Reformation) in which they were frequently called upon to stand in relation to deceased

and All Seynts. See also the convention between the Gild of Saddlers and the Canons of St. Martin's, *ant2*, p. lxxxv, n.

* The Company of Drapers, by their charter of the 17th Henry VI (1439), were incorporated by the style of "The Master, Wardens, Brethren and Sisters, of the Guild or Fraternity of the Blessed Mary the Virgin, of the Mystery of the Drapers of the city of London." Beside other "godlie uses," the Company of Drapers paid "an annual rent of vii. xiiii. iyd., going out of all the lands appertaining to their corporation, to the parson and churchwardens of St. Michael, Cornhill, for the maintenance of a priest to sing for the soul of William Comerton."—*Test.*, 12 Hen. IV.

The two societies of the Skinners were incorporated as one brotherhood, in the 1st Edw. III (1327), by the title of "The Master and Wardens, Brothers and Sisters, of the Guild or Fraternity of the Skynners of London, to the honor of God and the precious body of our lord Jesus Christ." This fraternity, without, however, any affectation of "superstitious" or ultra piety, still assemble for corporate purposes, on the day of their dedication, when the members admitted to the "livery and cloathing" of the Gild, are summoned "to attend divine service and hear a sermon"—the reformed representative of the solemn mass which formerly celebrated the dedication festival. *Stow* mentions many superstitious ceremonies of which this Brotherhood was the trustee; and so

members; and the many noble trusts still administered by some of them, preserved by a steadiness and unity of purpose for ages, through the revolutions of national government, religion and time, fully attest that our

recently as the 21st Hen. VIII (1529), on the eve of the Reformation, Robert Penson, by his will, bequeathed "to the Mayster and Wardens and Company of the Fraternity *Corporis Xti* of the craft of Skynners of London, a stoundinge guilte cuppe with a cover, and with my armes graven in the bottom of the same cuppe, *for the intente they doe pray for me.*"—*Harl. MSS.*, 1107.

The Taylors and Linen Armourers were re-incorporated the 18th Henry VII, by the style of "The Master and Wardens of the Merchant Taylors of the Fraternity of Saint John the Baptist, *of the city of London.*" This Company was trustee, under the will of John Hadley, for the payment of *xxs.*, to be expended in the celebration of his obit. And William Hylton gave "to the Taylors" *ccl.* to find a chantry priest in the church of St. Mary Woolnoth, for a term of years of which sixty-two were unexpired at the suppression.—*Book of Chantries, Harl. MSS.*

The Hurrers and Milliners were incorporated in the 26th Henry VI (1447), by the style of "The Fraternity of St. Katherine the Virgin, of the Haberdashers *of the city of London.*" Another gild of the same craft had also previously existed, viz. "Fraternitas S. Nicolai de Haberdasher;" so that the Haberdashers were happy in a choice of saints.

The Clothworkers were incorporated 20th Edw. IV (1480), by the title of "The Fraternity of the Assumption of the Blessed Virgin Mary, of the Sheermen *of the city of London.*"

ancient chartered gilds are not merely the assembled participators of a lord mayor's pageant, nor the confederated devotees of its feast.

The learned author of the *Britannia* has derived the gildated mysteries directly from a Saxon root, coincidental with the principle of an associated district in frankpledge. "The

By the ordinances of Whittington College, founded by the celebrated lord Mayor, in the church of St. Michael, Paternoster Royal, of which the Mercers' Company was trustee, the members were required "to pray for the souls of Richard II, the duke of Gloucester, their consorts, and those of Sir Richard Whittington and his wife Alice, and their parents." The Book of Chantries records that the Mercers' Company paid yearly to the use of the said College the sum of *LXIIII.*, beside certain tenements and quit-rents given to the master and fellows of the said college, to keep obits there, to the yearly value of *XIIII.* Under the will of Sir James Yardeforde, knt. (son of Will. Yardeforde, of Kidwelley in Wales, lord mayor, 1519), the Mercers also disbursed *xvii. per annum* for the sustentation of two chaplains, to sing for the soul of the said Sir James *for ever.*—*Book of Chantries, Harl. MSS.*

The Mercers, though of earlier association, were not incorporated until the 17th Richard II (1399). The Gild was dedicated "to the blessed Mary the Virgin," and had for arms "a *demi-Virgin* with her hair dishevelled, crowned, issuing out of and within an orle of clouds."

It is amusing to observe the anxiety of the Mercers, after the Reformation, to get rid of their superstitious dedication, and to turn their coat—their *demi-Virgin*, into a doubtful compliment to the fair sex :—

origin of these Gilds and Fraternities," says Camden, "is said to be from the old Saxon law, by which neighbours entered into an association, and became bound for each other, to bring forth him who committed any crime,

" When nature in perfection was
And virgin beauty in her prime,
The Mercer gave the nymph a gloss,
And made e'en beauty more sublime.
In this above our brethren blest—
The Virgin's since our coat and crest."

The Mercers' Song, 1704.

In 1686, Taubman had attempted to explain away the superstition which attached to their coat-armour, by asserting for the Company a priority of institution, to which they have no claim.

"As London has the precedency of all other cities, so you have the priority of all other Companies, being the first that was founded a society by Richard II. 'Twas then as an emblem of antiquity, having obtained the maidenhead of all charters and corporations, you were endowed with that honourable hieroglyphic of primitive innocence—the Virgin—for your coat" (*London Jubilee*). So also the *Mercers' Song*—

" Advance the Virgin—lead the van
Of all that are of London free :
The Mercer is the foremost man
That founded a Society."

Further, the historian of London informs us that, "when any one of this Company is chosen Mayor, to make one of the Triumphs of the day wherein he goes to Westminster to be sworn, a most beautiful Virgin is car-

or make satisfaction to the party injured; for which purpose they raised a sum of money among themselves, and put it into a common stock, whereout a pecuniary compensation was made, according to the quality of the of-

ried through the streets in a chariot, in all the majesty and glory possible, with her hair all dishevelled about her shoulders, to represent the maidenhead which the Company give [*qu. have?*] for their arms. And this lady is plentifully gratified for her pains, beside the gift of all the rich attire she wears. Such a pageant made part of the splendour of the day, anno 1701, when Sir William Gore was mayor."—*Strype's Stow*, v. ii, b. v, p. 258.

The Virgin also did the Brotherhood the honor of her celestial company at dinner—"a separate table was prepared for the Virgin, who dined with all the grandeur of the royal character she represented, attended by her ladies, pages, and all the rest of her retinue."—*Account of the Pageant*, by Eiken. Settle.

Notwithstanding the attempted transition to an object of gallantry, it is doubtless that the pageant originated in papistical devotion to the dedicatory patroness of the gild.

It is unnecessary to swell the catalogue, by citing all the Fraternities of an institution anterior to the Reformation, in which the same principle of patronal dedication was observed; nor, beyond the examples given, the very many "godlie uses" of which they were the trustees. The Mayor and Commonalty of the city, as an incorporated gild, in some instances stood in the same character; of whom the parson and wardens of St. Stephen, Walbrook, received the annual rent of *vi. viis. viiij. d.* for finding a priest *for ever*, in accomplishment of the last will of Roger Depesham, anno 33 Edw. III.—*Harl. MSS., Book of Chantries.*

fence committed. Hence came our Fraternities and Gilds; and *they were in use in this kingdom long before any formal licenses were granted to them*: though at this day they are a company combined together, with orders and laws made by themselves, with their prince's license."

As trade clubs, on which any purposes might progressively have become engrafted, perhaps it is not too speculative to trace (in common with some other of our local habits) a probable origin through Roman Britain to ancient Rome—where Numa has the credit of the invention of corporations so constituted. "Numa," says Plutarch, "upon his accession, finding the city torn to pieces by the two rival factions of Sabines and Romans, thought it a prudent and politic measure to subdivide these two into many smaller ones, by instituting *separate societies of every manual trade or profession*. These societies, says Blackstone, were afterwards much considered by the civil law, in which they were called *universitates*, as forming one whole out of many individuals; or *collegia*, from being gathered together."* By the civil law, the

* Comm., b. 1, ch. 18.

term university is not confined to the limited import by which it is commonly understood to be circumscribed, but represented any corporation or body politic, lay or ecclesiastical, so as to be in perfect keeping with the Saxon gildated fraternities of every denomination, and not inconsistent with the known foundation of our early mysteries or gildated crafts, and the subjection they were required to respect.

“Corporations, by the civil law,” says the learned commentator just cited, “seem to have been created by the mere act and voluntary association of their members; provided such convention was not contrary to law, for then it was *illicitum collegium*.* It does not appear that the prince’s consent was necessary to be actually given to the foundation of them; but merely that the original founders of these *voluntary and friendly societies* (*for they were little more than such*) should not establish any meetings in opposition to the laws of the State. But with us in England, the king’s consent is absolutely necessary to the erection of any corporation, either *impliedly* or ex-

* Ff. 47, 22, 1. Neque societas, neque collegium, neque hujusmodi corpus passim omnibus habere conceditur; nam et legibus, et senatus consultis, et principalibus constitutionibus ea res coercetur.—Ff. 3, 4, 1.”

pressly given ; the king's implied consent being found in corporations *existing by force of the common law*, to which our former kings are supposed to have given their concurrence." * Perhaps it might be difficult to draw a finer distinction, than that of a corporation existing by force of common law, as conclusive implication of the king's consent, and a voluntary association of friendly citizens met in convention, "not contrary to the laws of the State." A distinction with a difference existing only in a prescription acquired by sufferance, will exactly account for the position in which so many of the London guilds are found in the reign of Henry II, with reference to a period that induced the formation of numerous such confraternities; when, throughout Europe, it seems to have been the policy of the ruling powers to suppress all secret associations. This in England was effected, by subjecting voluntary guilds of every denomination to a positive submission to the royal approbation, by a special license, which reduces fine-drawn conclusions to a matter of fact.

If the inhabitants of districts were originally gildated for purposes of mutual defence, a

* Comm., b. 1, ch. 10.

like policy, with the change of times, associated them also in combinations of a social, neighbourly and religious character, conjoined to the advantages of a trading community. Distinct, therefore, in purpose from the principle which is said to have given them birth, these incorporations early acquired the designation of livery companies—a description which became conventional in respect of the crafts, and to the present day is intimately associated with the exercise of the elective franchise, by their members or certain of them admitted to the clothing of their gild. In the present enquiry, therefore, it will be essential to treat of the members of these corporate institutions, connectively with their character of guaranteed or liveried freemen; in order to place in a correct point of view the adoption of a distinction and the course of its acquired importance, which appear by no means to have been rightly represented or understood.

Upon the adoption of liveries by the associated Fraternities or trading Mysteries, Mr. Norton observes that, “in imitation of the Court and more powerful of the nobility, the corporation of London, who had the superintendence of these associations, assigned to several of them a particular costume, denominated a Livery, and required of such livery

companies that they should attend in that garb at all civic solemnities." In an appendant note he adds—"the Court of Aldermen have *always* exercised the right of authorising companies to wear liveries and admit livery-men; and, in most cases, it has expressly granted the liveries in the first instance." *

* Comm. on Lond., p. 183. In this deduction, the principle of the electoral clothing seems to have been overlooked in the pageantry of those "civic solemnities," which most probably, got up by precept from the mayor or centralized executive power, may have given origin to the statement. But these holiday garments, which appear to have varied in splendour with the occasion, had little reference to the original purpose of the liveries of the gilds, or their ultimate use; yet, as the distinguishing cognizance of citizenship, they bear evidence of the *civic freedom* and of the recognition of the mysteries at an early date.

In the 20th Hen. III (1236), the citizens, *clothed in long garments embroidered over with gold and silk of divers colours*, rode out to the number of three hundred and sixty, on horses finely trapped, to meet the king and his new wife, Eleanor of Provence.—*Stow*.

In 1300 (29 Edw. I) the citizens, to the number of six hundred, in *one livery of red and white*, with the *cognizance of their mysteries* on their sleeves, went forth to meet the king and his wife, Margaret of France. They met him four miles on the road to Canterbury, where the marriage had been solemnized.—*Ibid*.

In 1346 (20 Edw. III) the *Companies of London*, in their proper dresses, formed part of the procession of escort for the committal of David Bruce, king of Scots, to the Tower of London.—*Knighton*, p. 2592.

The exercise of the original authority claimed for the court of aldermen in the latter particular, will admit only of a retrospection subservient to its importance as an electoral qualification; and from the statement generally, so unsatisfactory in an historical point of view, the text of the faithful old

In 1415 (3 Hen. V) the mayor, aldermen and *craftesmen*, riding *in red gowns with hoods red and white*, met the king at Blackheath on his return from France.—*Stow*.

This public entry was on the king's return after the battle of Agincourt. Lydgate thus refers to it:—

The Mayr of London was redy bown
With alle the craftes of that cite
All clothyd in red thorough out the toun
 A semely sight it was to se :
 To the Black heth thanne rod he
 And spred the way on evry syde
 XXⁱⁱ Mⁱ men inyght well se
 Our comely kyng for to abyde.

Cott. MSS., Jul., B. II.

Anno 1432, "xj Hen. VI. The meyre, aldermen and shireves in scarlet, with *comens of London in grene*, rodde to the Black heth to receyve my lord of Bedford."
 —*Cott. MSS., Jul., B. I.*

This same year, "the xvj day of Decembre, G beynge the Dominical lettre, kyng Herry the vjth was crowned kyng of Fraunce at Parys, in the church of Notre Dame, with gret solempnyte and rialte; and anoon after he turned ayen into Engeland, and landed at Dovorr the ix day of Feverer and come to London the xxj day of the same month where he was ryally resceyved, *all the craftes rydyng ayens hym all in whyte*."—*Harl. MSS., 565.*

chronicler of London is found materially to differ.

“These companies,” says Stow, referring to the incorporated Liverymen, “severally at sundry times purchased the king’s favor and license by his letters patents, to associate themselves in Brotherhoods, with Masters and Wardens for their government. Many,

Stow is more particular—he says: The king returning from his coronation in France, the mayor, John Welles, the aldermen and the commonalty, rode out on horseback; the mayor in crimson velvet, a great velvet hat, furred, a girdle of gold about his middle, and a Bawdricke of gold about his neck, trolling down behind him: his three Henxemen on three great coursiers following him in one suit of red all spangled in silver. Then the aldermen in gowns of scarlet, with sanguine hoods. *And all the commonalty of the city, clothed in white gowns and scarlet hoods, with divers cognizances embroidered on their sleeves, &c.*

The monk of Bury has also celebrated the city Liveries on this occasion :

There clothyng was of colour ful convenable
 The noble mair clad in red velwet
 The shireves, the aldermen, ful notable
 In furreyd clokes, the colour of scarlet
 In statly wyse whanne they were met
 Ich on were wel horsyd, and mad no delay
 But with there maire rood forth in there way.

*The citezeyns ich on of the cite
 In there entent that they were pure and clene ;
 Ches them of whit a full faire lyvere*

also, have procured charters of incorporation with privileges, &c. *But I read not,"* adds he, "*of licenses by them procured for liveries to be worn but at their Governors discretion to appoint. And such liveries have they taken upon them as well before as since they were by license associated into Brotherhoods or corporations."* The observations of the learned

*In evry craft as it was wel sene ;
To shawe the trouthe that they dide mene
Toward the kyng hadde mad them faithfully
In sundry devyses embrowdyd richely—*

Cott. MSS., Jul., B. II.

On the 28th August, 1485, after the battle of Bosworth, Henry VII, on approaching the city, was met at Shore-ditch by the mayor and aldermen in *scarlet*, with other worshipful citizens in *violet*; they attended him to Paul's church, where he offered up the banners taken in the victory (*Grafton, &c.*) It may be well to notice, that the gown of violet was not then the distinguishing colour of the common council; that body wearing the ordinary livery gown, until the violet was adopted by act of C. C., July 31, 1761.—*Jor. Blakiston, 257.*

In the gorgeous and varied display of former times, is scarcely recognized the sober livery of after days; yet, as a preventive check upon electoral occasions, a change of costume seems to have been in agreement with the terms of an act of Common Council (15 *Edw. IV*), respecting elections of Mayor and Sheriffs (*Lib. L, 113*). "In the old times," says Stow, "the gowns and hoods used to be of two colours, as red and blue or red and purple, Murrey, or as it pleased the Master and Wardens to appoint to the Companies. But now of late," adds he, "they have

commentator must, therefore, be taken as referring to a comparatively recent period; for the facts of history are clearly with Stow, and indicate that the adoption of liveries, in the earlier associations, originated for the purpose of self-distinction, by their own appointment, as one of the earliest acts associated with an

used their gowns to be all of one colour, and that of the saddest; but their hoods being made of one half of the same cloth their gowns be of, the other half remaineth red as of old time."

Apart from the clothing of citizenship, or the cognizance of the Mysteries, was the "livery of the Mayor," a distinction that would have assimilated to the statutable offence of maintenance, had it not been an excepted case (*Stat. 8 Hen. VI, c. liij, vide post*), and recognized as nothing beyond an appendage of the pageantry of the mayoralty, now represented, it may be, in the diminutive, by the "lord mayor's footmen"—city officers of estate by purchase. The mayor's livery of old had also, perhaps, some advantages annexed, if only those of an occasional trencher, particularly as it seems likewise to have been acquired only for a consideration. Stow says—"when they of any company would have the mayor's livery, they used to signify the same to the Company's clerk, and put *twenty shillings at least as a benevolence* into a purse, with their names, which the wardens of the Company delivered yearly to the Mayor by the 1st of December. For which the Mayor sent every person four yards of broad cloth, rayed or striped thwart with a different colour, to make him a gown, which gowns were called rey gowns, and were the livery of the mayor and also of the sheriffs; and only differed from the others in colour."

object of their brotherhood;* in some instances is legalized by a prescription anterior to the known date of their charters or letters patents; and a livery company still exists, it is said, by prescription only.†

* The Grocers' Company is stated to have originated in an association of neighbours of the same trade, at a period when the trades were congregated in districts; and, at their first assembly, it was agreed that the whole of the members should be clothed in a livery. "And those who are of the Fraternity shall be clothed once a year in a suit of livery, and if they desire more, the same shall be by assent, whether as coats or surtotes, to be on the ordinance of the Wardens."—*Ordinatio Piperar. de Soper-lane*, 1345; *Stow*. See also the Fraternity of our Lady, *ant²*, p. ccv, n.

† The Salters had a grant of livery from Richard II, in the 18th year of his reign (1394); but were not incorporated until the first year of Elizabeth (1558). The Saddlers also existed as a Brotherhood, with a livery, in the reign of Edw. I, if not earlier (see their convention with their neighbours, the canons of St. Martin's, p. lxxxv, n.) The Painter Stainers were a Brotherhood and Company in the time of Edw. III, but were only incorporated by Q. Elizabeth in 1575; and though most of the Trades are now incorporated, yet several of them existed as livery companies for two or more centuries before they were so authorized; and the Fletchers (à *flèche*, an arrow) still exist, and exercise the franchise of a livery company, as it is said, by no other title than prescription. Their fellow-craftsmen, the "Society of the Mystery of Bowyers of the city of London," were not incorporated until the reign of James I (an. 1620), when their art had been wholly superseded by the introduction of more formidable missiles.

“Gilds in the light of corporations,” observes Mr. Madox, “are much more ancient than town corporations;”* and they certainly were of earlier institution, in London, than the corporation which is said so early to have had the control over them. Some of them, of whatever origin and purpose, without doubt existed under the government of the Saxon monarchs†—others appear of Norman introduction; and each, existing upon the princi-

* *Firma Burgi*, p. 23.

† The early convention between the gild of Saddlers and the Canons of St. Martin le Grand, before mentioned, refers to certain customs *anciently* existing between them in the time of the lord Ernaldus, their alderman; whence Mr. Herbert concludes, with evident propriety, that there is little doubt of the Saddlers being a veritable Anglo-Saxon gild, and consequently the oldest on record of all the present livery companies” (*Hist. of the Twelve Companies*, p. 17). The doubt is still less, that it was not the *only* trade gild existing at the same period, although there may not be records at hand so readily to bear evidence of the fact. Leofstanus (a Saxon) was styled “goldsmith” (*antè*, pp. c, cxxxii); and if the custom be taken, as it is known afterwards to have prevailed, not more so in reference to his actual craft, than the gildated mystery to which he belonged. Fitz Alwyn, the first mayor, is described “Draper”; Robert Serle, “Mercer” (1217); Andrew Buckerell, “Pepperer” (1232); Gerarde Batt, “Vintener” (1240); which, beside the authority of Fitz Stephen, referring to a still earlier date, indicate the general existence of the gildated crafts at a period much earlier than there are existing records of proof.

ple of the civil law, seems to have been self-constituted, with no other subjection to the governing authorities, than is to be found in an observance of the laws of the State,—an observance which, from toleration in the first instance, matured to the prescriptive title, which became the general plea to the *quo warranto* of Edw. I. When the will of the sovereign or the laws of the State required it of them, they obtained licenses and charters from our early monarchs for their several purposes,—some of an eleemosynary and religious character; others for the establishment and protection of infant arts or adventurous mercantile operations, with the other several objects combined: and though these, in many instances, gradually assumed the character of monopolous interests, injurious to the welfare of the citizens generally, the chartered mysteries nevertheless became useful adjuncts of the Crown; the master and wardens being frequently the appointed administrators of parliamentary enactments having special reference to their craft, as the more fitted to execute the authority of the State, at a period when the arms of government were weak in magistracy, and inefficient in fiscal and police arrangements.*

* The Company of Grocers “engrossed” Merchandize,

Otherwhere in his volume, Mr. Norton ex-

i. e. dealt in wholesale, were importers, and frequently styled "Merchants"; and hence the derivation of a corrupted term, which is now understood to designate a particular branch of trade. The *Gross-ers*, or *Groce-rs*, had the management of the king's beam within the city; with a power of searching and inspecting the goods and weights of all dealers in bulk, *temp. Edw. IV.* As a trading company, they had the monopoly of spices, and were the first importers of *Corinths* or *Corints*, vulgò currants, *circ. 1575*, a date which circumscribes a portion of our old English fare to a comparatively modern period. With a singular consonance of terms by no means synonymous, the 37th *Edw. III.*, c. 5, complains that "the merchants called Grocers do *ingross* all manner of merchandize vendible, and suddenly do inhance the price of such merchandizes within the realm, putting to sale by covin and ordinances made betwixt them called the fraternity and gild of merchants," &c.

The Goldsmiths obtained from *Edw. IV.* in 1462, the privilege of inspecting, trying and regulating all gold and silver wares, with the power of punishing offenders concerned in working adulterated gold and silver—which still appertains to the Company by prosecution of the existing penal laws.

By stat. 4 *Edw. IV.*, the Wardens and Governors of the mystery of the Cordwainers and Coblers were appointed "judges," to put in force the enactment which declared that "no cordwainer or cobbler, *in franchise or without*, should make any shoes, galoshes, or huseans, with any pyke or poleyn beyond the length of two inches." The Company had an interest in the conviction to the extent of one-third of the mulct for the offence; the penalty being *cursing by the clergy*, and a fine of twenty shillings, tripartly to be divided between the king, the cordwainers, and the chamber of London."

plains (somewhat more in keeping with the general evidence on the case) that, "from

Most of the Companies were empowered with a right of search and assise in their several trades, which, as having reference to honesty of manufacture, it is not improbable greatly contributed to the high character of the British mark in foreign marts, and the reputed commercial integrity of the nation.

In a case of trespass, for taking and breaking so many dozens of spectacles, &c., the defendant pleaded an ancient custom in the city of London, that *if any make and expose to sale ill and unserviceable goods, the chief officers of the Company have used to seize and carry them to the Guildhall, and impanel a jury; and if they find them ill and unserviceable to break them*; whereupon, shewing that the plaintiff is one of the Company, &c., that the defendants are master traders and chief officers of the Company; and that the goods made by the plaintiff, and taken *ut supra*, were unserviceable, the court took the custom to be good and reasonable, and the judgment was for the defendant, *nisi*.—*Skin.*, 55, 56.

The Painter Stainers seem to have been indebted for their charter of incorporation, not without reference to the suppression of those unauthorised limners who so annoyed the maiden monarch, by too faithful representations of her fair proportion. In a memorial of 1575, the antient Brotherhood set forth to her majesty, that not being incorporated, *they were without authority to prevent others practising the art, or power to prevent frauds committed by strangers, who made pictures "fair to the sight but badly wrought;"* whereupon her majesty incorporated them, by the name of "the Master, Wardens and Commonalty, of the Painter Stainers within the City and Liberties of the city of London, *being freemen and citizens of the same.*"

very early time, and probably soon after the establishment of the oldest of the city merchant gilds or companies, the city authorities claimed and exercised a kind of visiting jurisdiction over them. They compelled the companies to bring their charters to be enrolled among the city records, they exercised a discretion as to admitting the members to the civic freedom; and, in later times, this jurisdiction has been testified by their granting the liberty of livery." *

The control of the city government over the trading mysteries, whose members (except in certain excepted cases†) were its citizens, no

* Com. on Lond., p. 400.

† In these excepted cases arises the incongruity into which the city franchise by liveries had fallen, from the admission to the political intercommunity, of incorporated mysteries whose constitutional charters were inconsistent with the fundamental principle of a civic communia, or general gild merchant, according with the definition of Spelman (*antæ*, p. lxiii, n.)—composed of distinct incorporated crafts of citizens; and this incongruity, which certainly forms the exception, has been with equal inconsideration laid down as a general rule, bearing against the livery of all the crafts alike. Thus Mr. Noorthouck, referring to the case, *the Weavers' Company v. Handyside*, states it to have determined the point, "that every member of a company is eligible to the livery—*though not free of the city*."—*Hist. London*, p. 348.

The fact is incontestible, if the context could exist in any but an excepted case. The power of the incorporated

doubt must always in some shape have existed, in a common liability to its subjection, and to the laws of which it might have been the executive. The control, indeed, seems early to

companies to enforce their call on the livery by fine, had been repeatedly determined (*the Drapers' Company v. Grafton*, 1 *Mod. Rep.* 10; *the Vintners' Company v. Clerke*, 5 *Mod. Rep.* 156, &c.); and the only peculiar feature in the case seems to have been in the ground of Mr. Handyside's defence, viz. that not being free of the city, he considered himself unqualified for the position in which the livery of the Company, as he assumed, would place him in respect of the city: but here he had mistaken his position, for, in the excepted case of the Company to which he belonged, the livery was not necessarily the electoral livery of the city freedom; and the act of Geo. I had discriminated his position for electoral purposes, in the oath required to be taken.—*Vide p. 25; also App.*

The case, *the Weavers' Company v. Handyside* was this: Mr. Thomas Handyside being free of that Company, but not free of the city, refused to take upon him the livery of the Company when called upon to do so, and the Company sued him for the livery fine. The case came on in the Court of Common Pleas, Guildhall, 20th Dec. 1742, before the Rt. Hon. the Lord Chief Justice Willes, and upon *proof of the charter and bye-laws*, a verdict was found for the plaintiff.

In proving their charter, and the verdict they obtained against Handyside, the Weavers' Company may fairly be said to have established their own disqualification to regard as an entire company of citizens, in marked contradistinction to those so exclusively constituted.

The Weavers' charter set forth that—

“ Henry, king of England, duke of Normandy and of

have been exercised, and in the exact ratio that the united crafts departed from the negative principle of their original constitution, and acquired an active character opposed to the

Guyenne, earl of Anjou, to the Bishop, Justices, Sheriffs, Barons, Ministers, and all his true Lieges of London, sendeth Greeting: Know ye, that we have granted to the Weavers in London their Guild, with all the Freedoms and Customs that they had in the time of King Henry my Grandfather, so that they intermit none but within the city of their craft, but he be of their Guild; *neither in Southwark, or other places pertaining to London,* otherwise than it was done in the time of King Henry my Grandfather; wherefore I will and straightly command, that *over all lawfully they may treat*, and have all aforesaid, as well in peace, free, worshipful and wholly, as they had it freer, better and worshipfuller, and whollier than in the time of King Henry my Grandfather, so that they yield yearly to me two marks of gold at the feast of St. Michael. And I forbid that any man to them do any unright or disease upon pain of ten pound^s," &c.—*Howel, Londenop. p. 123.*

The exception is clear, in the fact, that the gildated Weavers were not confined to those of the craft "within the city;" but that, extending to "Southwark and other places pertaining to London," it was peremptory upon all those of the craft (who would consequently not be citizens) to be also of the gild; and this for the purpose of a general surveillance by the master and wardens. Thus, the gild of Weavers was an incorporation of the craft, citizens and non-citizens. Nevertheless, a Bye-law under the charter, and the general custom that all of the Company should be eligible to the livery, would bring Handyside within the rule; for, as laid down in another case,

laws of the State; or, (which is to the same purpose) that laws were created to meet the threatening aspect such combinations at times might be calculated to excite. Upon

the accession to the livery "did not concern the government of the city, but the state of the company only" (*the King v. the Mer. Tayl. Comp., re Smartford, 2 Lev. 200*). And here will apply the observation of Mr. Norton, who, commenting upon the early abolition of the Weavers' gild by the charter of John, truly remarks, "that the gildated or incorporated companies of tradesmen neither became, *by virtue of such incorporation*, the true original citizens, nor could claim the rights and privileges of citizens. So far from *becoming incorporated citizens*, or even bearing an affinity to them in character, their existence was at variance with the rights of the latter. Their trade was usually a monopoly, and even *the trading of such associated companies without being regularly enrolled citizens, was an encroachment*. This will sufficiently account for the request of the citizens for the abolition of the gild."—*Comm. on Lond., p. 400.*

An illustration of a still more unconstitutional non-citizen livery company, of modern institution, occurs in the Frame-work Knitters, who were incorporated in the 15th Charles II (1663), by the extraordinary title of the "Master, Wardens, Assistants and Society of the Art and Mystery of Frame Work Knitters of the cities of London and Westminster, the Kingdom of England and the Dominion of Wales." This Company held a monopoly of "the profitable Art for Stockings, devised in the year 1589 by the ingenious William Lee, Master of Arts, of St. John's College, Cambridge;"—and with the commercial policy of the age, lest the manufacture of stockings should exceed that of legs to wear them, each member was al-

the original principle of the civil law, while no opposition was offered to the voluntary association, it is perfectly consistent that their constitution should be known to be inoffen-

lowed only to take one apprentice after he had been free two years, and a second in the eighth year of his freedom.

As a principle that will generally apply, the gildated companies of tradesmen neither did nor could become citizens by virtue of such incorporation; but it seems too much to say that the trading of all such were encroachments upon civic rights; inasmuch as it depended entirely upon the quality of the incorporation, as in the cases cited, in marked exception to those gildated crafts of entire and guaranteed citizens; which, in virtue of such their discriminate constitution, obtained the distinction that truly belonged to them, of "city companies." Of these, the charters of several which have been stated (*antè*, pp. ccvii, &c.) are but examples of the general and true principle—all limited in their membership to *citizens of London*. Indeed the Skinners, by their confirmation charter, 16 Hen. VI—the Company of Cooks, by charter 20 Edw. IV, and probably others, were enjoined to present to the lord mayor every person admitted to the freedom of their Company, an observance in the former still virtually regarded; with an effect to both and all so constituted, that *every of their members should also be of the city freedom*. To the gildated mysteries so constituted, was the electoral franchise originally conceded; to such, upon constitutional principles, it ought to have been confined. But in the exercise of their right of granting the electoral livery, the Court of Aldermen seems to have acted upon misinformation, and, later, to have rested too confidently upon the discriminating operation of the parliamentary measure of 1725; for, by conceding the out-

sive and within the pale.* But the natural consequence of trade combinations seems directed to the assumption of a monopolous character, prejudicial to the community at large; and here the city government only exercised its legitimate authority, by becoming arbiters for the common good. The assize of provisions gave to it an early exercise of power over some of the Companies' private regulations;† and over others, it has been

ward garb of citizenship to gilds incongruous with the civic constitution, they broke down the barrier, and marred the efficiency of its civic test. Hence, in the unconstitutional gilds which form the excepted cases, are still found *liverymen-non-freemen*, who, as supposed citizens, assume its franchises, and occasionally aspire to its honors, without any inherent qualification of right. Thus, in the year 1840, one of the sheriffs elect, after contesting the office by a poll, was discovered to be a *non-freeman*. It would be curious to enquire whether gentlemen thus situated, (who perhaps unmoved like Mr. Handyside to a scrupulous enquiry into their true position), in a moment of enthusiastic inadvertence, *ever exercised the electoral franchise* under the Act of Geo. I for regulating city elections?

* "*Les pointz des bons genz de Sopere lane del mestier des peveres*," were made "for the common benefit of the whole people of the land," by the assent of Sir Stephen de Abyndone, Mayor, John de Gisors, Nicholas de Farendone, John de Wengrave, Robert de Kelsby, Will. de Loyre, and others.—*An. 1315, 19 Edw. II.*

† The distinction between the private rights of the gild and the jurisdictional supervision of the city authorities, is

pleaded to have been recognized by the statute of artificers, in the reign of Edward III;* the scrutiny in the following reign, when, by

particularly marked in the case of the Bakers; who, says Stow, were allowed to hold four hallmotes in a year, to *determine offences committed in their trade*; but were *restricted to selling in the market kept on the site of Bread-street* (30 Edw. I, 1301-2).—*Surv. Lond., ap. Strype*. A year or two previously, also, a dispute between the Burillers and Weavers, which, it may be assumed, did not compromise the common good of the city, was referred for arbitration to three of the Burillers' gild with their alderman, and a proportion of the Weavers' gild.

The distinction is again marked by the 1st chart. Edw. II and the 5th chart. of Edw. III, to the effect that none shall be brokers of any merchant, *unless chosen by the merchants of the mystery* in which the brokers exercise their offices; *yet they are to be sworn before the mayor of the city*.

Where the rights of the city were involved, stringent measures were not wanting in aid of the "visiting jurisdiction." The Fishmongers lost their monopoly as early as the reign of Rich. II (1480-1), in the mayoralty of John Northampton, who obtained an act of parliament for throwing open the trade. He moreover, notwithstanding its undoubted antiquity, compelled them to acknowledge their occupation *no craft*, and therefore unworthy to be reckoned among the other mysteries. But in the mayoralty of Rich. Brembre, knt., by st. 7 Rich. II, c. 11, they were restored to their "ancient rights and privileges, excepting the privilege of holding courts, all affairs belonging to the Company being referred to the Mayor's court, conformable to the late charter;—all fishers comynge with their vitayles to the city of London beinge placed under the gouernement and rule of the mayor and aldermen."

* 37 Edw. III, c. 6.

letters mandatory of the king, the mayor was required to make proclamation for every gild to enrol in chancery the circumstances of its incorporation,* further reduced them to the supervision of the civic rule, which the statute 7 Hen. IV contributed to sustain; and a general law of the 15th Hen. VI† was compulsory upon all gilds and fraternities to en-

* Order in Council, 12 Rich. II, referred to, *antè*, p. cci. It is remarkable that the returns under this order, at present known, are confined to the suppressed ecclesiastical gilds; those of the remaining fraternities, if they were not afterwards suppressed by the influence of the interested surviving institutions, they still lie buried in the mass of yet unsorted records.

† 15 Hen. VI, c. 6: "Where as the Maysters, Wardens and people of the guyldes, fraternyties, and other compaynes incorporate, dwellinge in dyuers partyes of the realme, oftentimes by coloure of rule & gouernance & other termes in generall wordes to them graunted and conformed by charters and letters patentes of the kinges progenitours, make themselfe many vnlawfull & vnreasonable ordinances, aswel of many such things, wherof y^e cognisance, punishment and correctional only pertaineth to the king, lordes of fraunchyses, & other persons, & wherby our soueraigne lord the king & other bee disherited of their profites and franchises, as of thinges, which oftentimes in consyderacy is made for their singular profit & com'on damage to y^e people. The same our souerayne lord the king by the aduise, &c., hath ordeined, that the malsters, wardens, & people of enery suche guyld, fraternitie, or companye incorporate, betwixte thys & the feast of saint Michel next coming, shal bring & do all theyr letters patentes & charters to be registred of record before the Justyces of peace in y^e counties or before the

rol their charters of record before justices or other local governors. The operation of the latter statute is remarkable in the fact, that in the following and succeeding years, nearly all of the incorporated crafts of London then in existence, obtained confirmation charters, with reduced powers; most of them being restrained from making bye-laws, in the words of the statute, "unless approved for good and reasonable by the justices or chief governors aforesaid."

Independently of this subjection to the common laws, the discretionary power of the Court of Aldermen over the livery of the Companies seems only to have arisen with the occasion; and to have occurred originally in a recognition of that of the existing guilds, as an electoral test, at a time that the gildated crafts, as embodied classifications of the trading free-

chief gouvernours of the sayd cities, boroughes, and townes, where such guilds, fraternities, and companies be. And moreouer hath ordeyned & defended by the auctoritie aforesayd that fro' hensforthe no such maysters, wardens, nor people make nor vse no ordinance, whyche shal be to the disherison or diminucion of the kings fraunchises, or of others, nor against the com'on profite of the people, nor none other ordinance of charge if it be not dyscussed and approued for good and reasonable, admitted by the justices of peace or the chief gouvernours aforesaid, and before them entred of record and after by them reuoked and repealed, if it be found by them not lawfull or not reasonable, &c.

men, became important electoral *colleges*; and when the effect of that supervisional power was to control the elective franchise, of which the livery, as the identity of guaranteed citizenship, had become the distinctive mark. In this control is visible a remnant of the same original government of the *Majores*, which, under the previous arrangement, had "managed," to a point of representative inefficiency, the elections by the wards.

To trace, however, the use of liveried associations to an origin, it may be necessary to revert to that early period and crude state of civilized society, to which the historians before mentioned have referred the birth of guilds and fraternities,—when mutual aid and protection induced men to confederate together and consolidate themselves as *sworn brethren*. At different periods, this policy of union has been put in action with a good or ill—offensive or defensive intent. As a measure of government, at a very early period, it had the form of an oath of fealty to defend the realm with the king against foreigners and foes.* It formed a principal object identified

* *Ll. Edw. Conf.* "Statutum est enim quod ibi debent populi omnes, et gentes universæ singulis annis, semel in anno, scilicet convenire, scilicet in capite Kal. Maii, et se fide et sacramento non fracto ibi in unam et simul

with the system of frankpledge, and was renewed yearly, at a stated time, by every freeman within his district.* On the contrary, confederacies of a similar nature were formed for the Norman invasion of Britain;† and

confœderare, et consolidare sicut *conjurati fratres* ad defendendum regnum contra alienigenas, et contra inimicos, una cum domino suo rege."—*Ll. Ang.-Sax. ap. Wilkins.*

* Vide Folemote, *ant?*, p. clxv, n. The primitive ceremonial of the feudal obligation annually required of the freemen within the Hundred, seems to have been a custom of fealty derived from the most remote antiquity of arms, and is explained in the origin of the name, by which many of those subdivisions, particularly of the northern counties, are still known. Et quod Angli vocant Hundredum, supradicti comitatus vocant Wapentakium.—*Lambard.*

Wapentake (*Sax.* *Peapen-tac*) is the same with a Hundred (*Hundredarii* sive *Wapentakia*—*Bract.*, l. 3, t. 2)—and is said to have taken its name from the cause following: that when first the kingdom was divided into districts, he who was chief of the Wapentake or Hundred, and whom we now call a High Constable, as soon as he entered upon his office, appeared in the field on a certain day on horseback, with a pike in his hand, and all the chief men of the hundred met him there with their lances, and touched his pike; which was a sign that they were firmly united to each other, by the touching of their weapons.—*Hoveden, Fleta, lib. 2.*

† Robertus de Oileio et Rogerus de Iverio, *fratres jurati* et per fidem et per sacramentum confœderati, venerunt ad conquestum Angliæ (*Kennett, Paroch. Antiq.*) These persons divided the estates allotted to them by the Conqueror (*Dugd. Baron.*, v. i, p. 460). A similar division was made between Robert Marmyun and Sir Walter

were again adopted by the Conqueror, when, after mounting the throne of the Confessor, he called upon every free man to unite as sworn brothers for the defence of the monarchy*—and with good effect, the oath of fealty having thus a much more forcible compact than of simple allegiance; for being sworn in brotherhood for a particular object, carried with it all the emulation and the daring hardihood of conduct inspired by competition, and so conspicuous in the chivalry of the middle ages. In the vernacular tongue, the *fratres conjurati* were denominated *peb bpoðra*, *wed brethren*, or sworn brothers; and a similar compact is mentioned by ecclesiastical writers, under the terms *confraria*, *confrairie jurée*, &c., whence both clerical and lay institutions soon resolved their cognomen into the common term *confraternitas* or fraternity; and by reason that every member of

de Somerville, who were also sworn brothers in the expedition (*Ibid.*, p. 375). From these confederacies for the division of plunder, it has been supposed we derive the colloquial term, “sworn brothers in iniquity.”—*Med. Ævi Kal.*, v. i.

* *Hoveden*, p. 445. Statuimus et firmiter præcimus, ut omnes *liberi homines* tôtius regni prædicti sint *fratres conjurati* ad monarchiam nostram et ad regnum nostrum pro viribus suis et facultatibus contra inimicos pro posse suo defendendum.—*Ll. Ang.-Sax. ap. Wilkins*.

these fellowships was required to pay a *gild*, or contribution towards the promotion of the particular object of the society, they were called *gilds*, corruptly *guilds*, from *gildan*, *to pay*; and thence is the origin of corporations directly derived. "If," adds Mr. Hampson, "the Freemasons have a higher antiquity than these *gilds*, wed-brethren, and *fratrum conjurationes*, they are their parents." *

In after times, these associations became more frequently dangerous to the existing institutions of the State, than available to its support—hence they are found to have been denounced, as formed for purposes opposed to the laws of good government. In the 13th and 14th centuries, the denunciations against the *fratrum conjurationes* were frequent, and they in a great measure ceased to be honorable, by reason that so many of them had been formed for purposes of brigandage.†

Earlier, about the year 1173, Fraternities had much increased in number in London, not more as ordinary secular and religious

* *Medii Ævi Kal.*, v. i, p. 266.

† They were denounced by the council of Montpellier, in 1214; by that of Toulouse in 1220; by that of Arles in 1231; Compeigne in 1238; Valentin in 1248; Avignon in 1281; and by the council of Treves in 1310.—*Du Cange, Gloss.*, t. ii; *Med. Ævi Kal.*, v. i, p. 266.

associations, than as bodies co-operating for mutual defence—and, as it is said, even for aggression. In that year, the chroniclers report the city to have been in a sad state of licentious disorder from remiss government. Some of the citizens (“wylde com’oners” of foreign growth, let us believe*) are charged with associating themselves in confederacies for robbery and plunder; breaking open houses by night, and even committing murder to obtain their lawless ends. An apology for these outrages has been sought in the unsettled consequences of the contest of the empress Maud and Stephen for the throne; but an interval of five and thirty years might be considered sufficient for the licentiousness of military life to have become softened down to the wholesome subjection of the civil power; and the fact speaks much for the lawlessness of the time, though little for the authority of the local rulers. Associated bodies by mutual aid, for the protection which the civic government could not afford, seem the natural consequence; and these, as neighbourly guilds, would in most cases be formed of citizens of the same craft, if only from the circumstance of the trades being so located.† An excep-

* Fabyan, Chron., p. 357, ap. Ellis; antè, p. clxvi.

† Fitzstephen, temp. Hen. II; Fabyan, Chron. Stow

tion to the rule may account for the existence of some gilds about this period, for which no other explanation can now be found. Nevertheless, whatever may have been their particular, or combination of objects, it is certain that there were, not only in London but elsewhere, many gilds or self-constituted bodies, each under the rule of a president or alderman, which, about the year 1179, excited the notice of the king;—some of them were composed of the craftsmen of a particular trade—others appear to have been religious institutions; and some bear no denomination by which they may now be classed: but the whole were amerced in various sums of money, and denounced “adulterine gilds” (a term equivalent to the *illicitum collegium* of the civil law*)—as having assumed to themselves associated powers, without the authority

says the Pewterers were a company of friendly and *neighbourly men of the same trade*, temp. Edw. IV, as also were the Pepperers of Soper-lane, 1315; and in 1355, we have the Tanners “ex Newgate”—the Butchers “de les Stokkes”—the Butchers “destchep”—the Tanners “ext’ Crepelgate”—“Grossers in Rop’ie,” &c. &c. The united Skinners were located in Budge Row, whence its name, from the fur so denominated, “The Livery in gowns faced with Budge” (*Ironmong. Pageant*, 1635). The locations of most of the other crafts may also readily be determined.

* Antè, p. ccxlii.

of the royal license to do so, and consequently in derogation of the existing laws of the State, an observance whereof, it has been seen, was the original compact of the legal sufferance of self-constituted corporations.*

At the council of Arles, in 1234, these associated bodies were spoken of as "*conjurationes et conspirationes, quæ confratriæ vocantur*"; and the council of Avignon, in 1326,

* It is quite clear that licenses, in some shape, had then and previously been required. The Bakers' and Weavers' gilds are known to have yielded a *ferm* to the king—the latter in the reign of Henry I; while the Goldsmiths, Butchers, Pepperers, and some other known gilds, are found among those amerced, so that the custom may be supposed not to have become established. None of the histories of London contain a correct list of the adulterine gilds; the following is from Madox:—

Amerciamenta de Gildis Adulterinis in Civitate:

Gilda unde Goscelinus est Aldermannus, debet xxx m.

Gilda Aurifabrorum, unde Radulphus Flael est Ald., debet xlv m.

Gilda de Halliwell, unde Henricus filius Godr. est Ald., debet xxs.

Gilda Boachelorum, unde Willelmus Laseite est Ald., debet j m.

Gilda de Ponte, unde Thomas Cocus est Ald., debet j m.

Gilda unde Willelmus de Haverhill est Ald., debet x m.

Gilda unde Johannes Albus est Ald., debet j m.

Gilda Piperariorum, unde Edwardus est Ald., debet xvj m.

Gilda de Ponte, unde Alwinus Finke est Ald., debet xv m.

Gilda Parariorum, unde Johannes Maurus est Ald., debet j m.

set forth that many of the nobles in the provinces, and others, formed unions and societies, interdicted both by the canons and human laws, and, assembling in some place once a year, they made articles and agreements, and, under oath, they pledged themselves to assist each other against all persons except their lords; and, in every case, one was to give aid, counsel and favour to another: *some-*

Gilda unde Robertus Rochefolet est Ald., debet j m.

Gilda unde Ricardus Thedr. Feltrarius est Ald., debet ij m.

Gilda de Sancta Lazaro, unde Radulphus de Barre est Ald., debet xxv m.

Gilda de Ponte, unde Robertus de Bosco est Ald., debet x m.

Gilda Peregrinorum, unde Warnerius le Turner est Ald., debet xls.

Gilda unde Odo Virgil est Ald., debet j m.

Gilda unde Hugo Leo est Ald., debet dimidiam marcā.

Gilda de Ponte, unde Petrus filius Alanii fuit Ald., debet xv m.

Mag. Rot., 26 H. II, r. li b.; Hist. Exch., v. i, p. 562.

By some writers, the amerçement has been represented as a violent exercise of power, to raise a purse for the exigencies of the monarch; but that idea is dispelled by the fact, that the amount remained so many years unpaid (*vide antè, p. lxxxj, n.*) The visitation originated probably in the determination generally to suppress secret societies, and to authorize those which might meet the royal approval; not, perhaps, without an eye to the revenue, for the royal authorization and suppression were commonly alike expressed by a mulct.

times they dressed themselves in similar clothes, with curious signs and characters, and chose themselves a chief, whom they swore to obey in all things.

The formation of fraternities distinguished by signs, or uniformity of clothing, was the origin of liveries, and in this kingdom became the subject of repeated statutes for the suppression or restraint of an evil, which, in a rude and lawless age, not only frequently disturbed the public peace by private brawl, but sometimes threatened to overawe the power of the monarch; the trade gilds even were not without an occasional outbreak,* to which some known distinguishing badge

* In 1268 (52 Hen. III), a quarrel arose between the Goldsmiths and Taylors, who, meeting one night completely armed to the number of 500, to decide it by blows, many were killed and wounded on either side; nor did they part until the sheriffs, with a party of citizens, apprehended the ringleaders, thirteen of whom were condemned and executed.

In 1339 (13 Edw. III), a similar disagreement between the Fishmongers and Skinners led to a riot and skirmish. The magistrates interfered, and seizing some of the offenders, they were rescued by two of the ringleaders, Thomas Haunsart and John le Brewere. These desperadoes were, however, taken, tried at Guildhall, and forthwith executed in Cheapside. This is a remarkable case of the extreme exercise of power by the Mayor. It is stated that he had been invested by the king (during his ab-

seems as indispensable as in any other case of partisanship, proscribed under the term "livery of Company." *

sence) with particular powers for the preservation of the peace of the city. However, upon the king's return, it was thought advisable that the city magistrates should have a patent of indemnification for their conduct.

* In the early statutes against maintenance, the gathering of fraternities in livery was punishable by the justices of assise. The 1st Rich. II sets forth—that because divers people of small garrisonne of lande or rente, or other possessions do make greate retinue of people, as well of esquyers as of other in many parties of the realme, geuing to them *hattes and other liueray* of one sute by yere, takinge agayne towards them the valoure of the same liueraye, or percase the double valoure by such covenant and assuraunce, that euerye of them shall maintaine other in all quarels, be the reasonable or vnreasonable, to the great mischief and oppression of the people. It is ordeigned and assented that the statutes and ordinances *made in such case before this tyme* be kepte and duely executed. And moreover the king doth straitly defend that from henseforth no such liueraye be geuen to any man *for maintenaunce of quarels, nor other confederacies*, upon peine of imprisonment and greuous forfeiture to the kinge. And ye justices of assyses shall dilligently enquire of *all them that gather them together in fraternities by such liveraye* to do maintenaunce, and they whiche thereof shall be founde guilty shalbe duely punished, euery man after the quantitie of his desert.

The succeeding measures with the same intent will shew the progress of legislation; and the recognition of the livery of the mysteries, in the exception in favour of the people of crafts.

By the 16th Rich. II, c. 4, No yeman nor none of lower

The term *livery*, however, does not appear formerly to have been limited to the interpretation to which it is now confined; but was

degree than an esquire to bear *livery of Company* of any Lords within the realm, if he be not meniall and continually living in the dwelling house of the said lord.

By the 20th Rich. II, c. 1, *Livery of Hattes* forbidden.

By the 20th Rich. II, c. 2, That no Varlettes called yomen nor non other of less estate than esquier shall use or bear no *signe of livery* called *livery of Company*.

By the 1st Hen. IV, c. 7, 'To eschewe mayntenance and to norryshe loue, peace and quietnes of all parties throughe the realme—*livery or signe of Company* was forbidden; and none to give any *Livery of Cloth* to any man save to his meniall servants.

By the 2nd Hen. IV, c. 21, The same provisions were re-enacted.

By the 7th Hen. IV, c. 14, No archbishop, bishop, abbot, nor prior, nor none other man of holy church nor temporal of what estate or condition that he be, shall give any *Livery of Clothe or Hattes*, under a penalty of *Cs.* for every offence; and *xl s.* on the wearer, half to the informer, and that the same paynes be in no wise pardoned. Moreover, it is ordayned that no congregacion or company be made of such lyuerye of cloth nor of hattes at the proper costes of the congregacion or companye vpon payne of every man of the same congregacion or companye yt doth contrary to this ordinaunce or statute, to pay to the Kinge *xl s.* *The gylde and fraternities and also the people of mysteries of cityes and borowghes within the realme that be founded or ordeigned to a good intent or purpose onely except.*

[To meet the coucession by this Act made to the mysteries, a Bye-law of the city, passed the 23rd Sept. of the same year (7 Edw. IV), enjoined—"That no freeman or

employed indiscriminately to denote any distinguishing dress, badge, or cognizance. As a general term, it applied equally to the garb

officer of the city shall take the livery of any great man, on pain of losing his freedom and office."—*L. 53, Leg. 98.*]

The 13th Hen. IV, c. liij,—to the effect of the former; *excepting onely Guilds and Fraternities, and also people of craftes within cities and boroughs.*

The 8th Hen. VI, c. liij—To the same effect; but *not to extend to the Mayre or Sheriffes of London* for the tyme yt they shall be officers, serjeantes of the law at the tyme that they take the same estate upon them, and them that do commence in the vniversities within the realme of England. [See "*Livery of the Mayor*," p. ccxx, n.]

The 8th Edw. IV, c. 3, against Liveries and Badges.

The 3rd Hen. VII, c. 1, against unlawful mayntenaunces by gevinge Liveries, signes, and tokens, and retaynders by Indentures, promisses, othes, writings or otherwise.

The 19th Hen. VII, c. 14, against Liveries, tokens, badges or signs; inflicting a penalty of C s. on retainer and retained per month.

It is related that Henry VII, being once entertained very sumptuously by the earl of Oxford, at his castle at Henningham,—at his departure, the Earl's servants were stationed in *their Livery Coats with cognizances*, ranged on both sides "to make the King a lane." Whereupon the King called the Earl to him, and said—"My Lord, I have heard much of your hospitality, but I see it is greater than it is spoken; these handsome gentlemen and yeomen whom I see on both sides of me are sure your menial servants." At which the Earl smiled and said—"It may please your Grace, that were not for mine ease; *they are most of them my retainers*, and are come to do me service at such a time as this, and chiefly to see your Grace." Whereat the King started a little, and said—

of the monastic brotherhoods, and the knightly and burgensic secular gilds,* as to the cognizance of the mailed warrior in the field, and the uniform garb or distinction of his retainers. Thus, legislation is found particularly to have been directed against the "livery of hattes;" and the ostrich feather is described to have been the *livery* of the prince of Wales.†

The employment of a distinction as the livery of freedom, may be traced to the Phry-

"By my faith, my Lord, I thank you for my good cheer; but I may not endure to have my laws broken in my sight: my attorney must speak with you about it. The composition which the rapacious monarch thus obtained is said to have been 15,000 marcs (*Bacon; Baker, Chron.*, p. 248). The *cognizance* is still in use by the city livery companies, in the huge silver or gilt badge worn on the arm of one or more of their retainers—as well as by ancient families of distinction, on the arm of their outriders and postillions. Perhaps the dresses of the yeomen of the royal guard, being of the fashion of Henry VII, afford the best remaining specimen of the embroidered cognizance.

* "For making a gown and hood of *the livery of the Garter*, for the Duke of Ferrar, 8s."—*Wardr. Acc. Edw. IV (Harl. MS. 4780)*. In the progress of Bolingbroke to his coronation, from the Tower to Westminster, he rode all the way bareheaded, and *about his neck the livery of France (Froissart)*. This was a short mantle or cape, *semée of fleurs-de-lis*. In the same procession attended every craft, with their *livery and device*.—*Ib.*

† When the earl of March (afterwards Edw. IV) landed at Ravenspur,—in order to disguise his aim at the Crown,

gian cap, adopted from that free people by the Romans,—and encircled with the word “*Libertas*,” by them awarded to emancipated slaves. Introduced into Britain with the same operation, it became an heraldic emblem of the enfranchised city of London, and is still borne, *disguised*, under the form of that *outré* fur bush which surmounts the city arms, and the sword-bearer’s head. Modern times, however, have seen the Phrygian cap of its ancient form adopted, in the *bonnet rouge* of the French revolutionists, and stamped on the republican coins of France and the Americas.

As a cognizance for artizans of crafts, the employment of a livery is of an antiquity anterior to European history, when the religion of the Hindoo had yet assigned *distinguishing garbs to castes*, which, involving the heredi-

he wore “*an Estrich feather, the livery of Prince Edward*.” With more propriety, as an individual distinction, this device might have been termed a cognizance; but heraldic distinctions, from the manner in which they were commonly borne, might readily become of indistinct combination with a livery, which, by custom, was so intimately associated with a *gown*. At Bannockburn, “the Scots would have saved the earl of Gloucester if they had known him, but on that day he had neglected to put on ‘*togam propriae armaturae*’—the *gown* or surcoat on which his arms were depicted.”—*Tho. de la More, ap. Camd., p. 594.*

tary doom of a particular handicraft occupation,* differed in little than the compulsory obligation of heritage, from the original clothing of our early gilds. But the livery of the trading Fraternities, gilds or mysteries of London, while, in its earliest record, it voluntarily distinguished one craft from another for their own particular identification, became also the visible characteristic of the free citizen; and in this particular will take a higher standing, which may not inaptly claim fellowship with the *toga*, or peace-garment of the citizens of Rome. And this united characteristic, for centuries recognized as the embodied representation of perfect citizenship, which it has been the object of the uninformed of recent times to decry as an usurpation, was nevertheless as legitimate in its origin as the amalgam was simple; for, as the gildated crafts were at first associations of neighbourly men of the same trade, so also none could, by the constitution of the city incorporation, have been in the position to become a neighbourly associate of such a fraternity as a householder in trade, unless he should have been admitted to the special freedom of the incorporated city, and thereby entitled to the local privilege of trading within its limits.† So, at a later

* Colebrook, Digest Hindoo Law.

† In the 13th Edw. I, every alderman in his ward was

period, apart from the pageantry with which the livery is associated, and to which it has been commonly referred, the *togati*, or liverymen of London, as identifying the full citizens,—the *meliores*, or better, “wiser and richer men of the wards”—distinguished the electors of the city franchise, both in its limited and extended character, at a time when no other identification or guarantee existed,—when the modern system of polling or registry of votes was unknown, and when elections were carried by the acclamation and show of hands of those present.*

required to make strict search, and allow none but freemen to reside in the city (*Stat. Civ. Lond.*) “And by the ordinances of the city, none shall occupy as a freeman before he be sworn in the chamber of London, and admitted by the chamberlain” (*Calth. Rep.* 196). The presentment of non-freemen is still a duty of the Wardmote Inquest Juries. See “*Articles of the Wardmote*,” p. 201, n.

* The show of hands, it will be remembered, is still in contemplation, and where there is no opposition, in fact, the election; the polling which now follows, as a matter of course, upon the demand of one of the candidates, being nothing more than a supposed test of the correctness of the returning officer's decision, as a scrutiny or petition is that of the voters' qualification. The best evidence of the improved mode and of the incompleteness of any preceding, other than a rigid regard to the electoral clothing or livery, occurs in the fact, that a show of hands, at the present day, rarely indicates the result of a contested election.

At the institution of the fraternities, as neighbours in trade and householders, the livery seems to have been apportioned to all the members ;* but a distinction is early observable, as arising out of the compulsory enrolment in the crafts, and the consequent increase in their respective numbers ;—then, while every one following a craft within the city liberty was required to be a member of the gild, or “free” of the particular mystery, it was only upon the original principle that the livery was dispensed, viz. to certain of the “better sort” or “more able” among them—who, at the discretion of the master and wardens, were elected to the clothing, with the reputed character of assistants to them in performing the objects, and perpetuating the corporate faculty of the gild ;† the qualification, apparently, still being that of the earliest

* Antè, p. cccxi, n.

† In the constitution of the Clothworkers' Company, temp. Henry VI, it is stated that—

The Master is elected out of such as have formerly been upper Wardens.

The two upper Wardens out of such as have formerly been under Wardens.

The two under Wardens out of the ancientest and ablest of the livery.—*Ord.* 2.

The *Livery* out of the ablest of the yeomanry, or diffusive body.—*Ord.* 14. *Lib.* 9, fo. 145.

known constitution of the trading gilds, viz. *freemen householders of the Wards*,* of the same craft, as distinct from the yeomanry, or

* That the Liverymen were Freemen Householders appears very clear, from a record remaining in the Chapter-house at Westminster, furnishing, as it appears, a list of the electors of the several Companies in the 29th Hen. VIII. It is thus entitled :

“ Touching the P^rlment. The Companies of all the Craftes or Mysteryes of London.

“ The several Companyes of all the Mysteryes, craftes and occupacions, wthin the citie of London, wth the names of every freeman, being householders, wthin the same. Anno 1537.

“ List of the Freemen Householders of the Mer-	
cers' Company—[<i>then follow their Names, to</i>	
<i>the number of</i>]	
Freemen Householders of the Grocers' Company .	53
“ Drapers	77
“ Fishmongers	109
“ Goldsmiths	52
“ Skinners	150
“ Merchant Taylors	97
“ Yrenmongers	59
“ Vintners	33
“ Clothworkers	69
“ Armourers	48
“ Bakers	65
“ Barber Surgeons	186
“ Blacke Smythes	25
“ Brewers	89
“ Coopers	63
“ Cordwainers	56
“ Curriers	38

merely freemen,—or batchelors; the latter probably embryo liverymen, or probationers ;

Freemen Householders of the Cutlers' Company .	65
„ Browderers	33
„ Ffletchers	44
„ Ffounders	65
„ Ffruiterers	39
„ Inholders	43
„ Joyners	52
„ Lethersellers	113
„ Ffreemasones	37
„ Paynter Stayners .	53
„ Plumers	25
„ Sadlers	60
„ Talowe Chaundlers .	99
„ Tylers	89
„ Waxechaundlers .	44
„ Wevers	30
„ Pasteleurs	47
„ Sporyars	20
	2456

Allen, Hist. of Lond.

The purpose of this document has been variously supposed—it may have been a return made to Government for the assessment of tallage or subsidy, or it may have been a list of the electors, as “touching the parliament”—but that is not material, as it is beyond doubt that the *freemen householders* were identical with the *more able men of the mysteries* elected to their *clothing or livery*. By some, the freemen householders have been described as of a “middle rank between the livery and the yeomanry, and not the livery themselves;” but Mr. Herbert readily combats that assertion by shewing, that the same

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not householders, but freemen, the sons of liverymen.*

That the election to the livery was not

names of persons entered in the record as freemen householders of the Drapers' Company, are also, at the same date, found on the court roll of that company (*Hist. of the Twelve Comp.*, v. i, p. 92). Additional evidence of the fact is found in the order for the ceremony of *electing Master and Wardens* of the Company of Ironmongers, in 1562, directing that the day of the ceremony and the dinner accompanying it, shall be postponed from the Sunday after Trinity Sunday to the Monday following, when *the householders are to attend at the hall in their best liveries* to go in procession to church, there to offer at the altar," &c.—*Lond. Rediviv.*, v. ii, p. 42.

* In a pageant of the Ironmongers' Company, in 1635, the procession is thus described :

"60 poor men led the way in gowns and caps, each bearing a standard or banner.

50 Gentlemen Ushers in velvet coats.

The Batchelors in gowns and hoods—the former faced with foins.

The Livery, in gowns faced with budge, and hoods.

The Master, Wardens and Assistants."

Lond. Rediviv., v. ii, p. 45.

The merely freemen seem to have been of no great account :

1660. *Ordered*, that on the occasion of the king's entry into the city, John Cleaver (substitute for the beadle) do carry the Company's banner on horseback ; and that notice be given to some young freemen of the Company to serve as *Whiffers* (flers), who are with him to attend the Livery at their stand on that day.—*Rec. Sta. Comp.*, *Lond. Rediviv.*, v. iv, p. 403.

merely an honorary distinction, but at times more onerous than agreeable, history affords ample testimony*—beside that there are instances of objection and attempted avoidance but acceptance upon election seems to have been as compulsory a liability of the enrolment in the craft,† as such enrolment was of the customary routine of the city freedom. And thus, at as early a period as there are records of the one, the other is found in intimate and necessary association as an accessory, which carries convincing testimony of the predominating influence of the gildated crafts, as a component principle of the mercantile constitution of the city, over the wards as its ancient territorial or proprietary subdivisions.

The ceremonial of admission to the freedom of the city in the time of Edw. I, when it is found by the earliest city books to have been

* In 1640, upon a forced loan to the king by the city, the Ironmongers' Company assessed on their members, viz. from 10*l.* to 25*l.* on each of those who had fined for Master. On the office of Warden, 6*l.* 18*s.* 4*d.* On every member of the Livery, 5*l.* And on the Yeomanry, 3*l.* each.—*Rec. Ironm. Comp., Lond. Rediviv., v. ii, p. 53.*

† In the Companies of London, some of the freemen are chosen of the livery by the several companies, who shall hold the said office without some reasonable excuse to the contrary; and refusing to serve they may be fined; and action of debt brought for the sum.—*Raym., 447; vide etiam, ante, p. ccxxvii, n.*

in established operation, was by formal admission *in the Hustings*, and the administration of an oath :* an arrangement which is probable to have been the original practice at the formation of the special incorporation, referring, as it does, to the early government of the territorial aldermen or barons of the city socs, in their associated conciliar and judicial

* Lib. Ordinat., fo. 143 et seq. The ancient oath of the city freedom, which seems founded on, and to embrace, the particular circumstances of the charter of Edw. II, was as follows :

Ye shall swear, that ye shall be good and true to our sovereign lord the King. Obeysant and obedient ye shall be to the Mayor and Ministers of this city. The franchises and customs thereof ye shall maintain, and this city keep harmless in that that in you is. Ye shall be contributory to all manner of charges within this city, as summons, Watches, Contributions, Taxes, Tallages, Lot and Scot, and to all other charges, bearing your part as a freeman ought to do. Ye shall colour no foreigners' goods under or in your name, whereby the king or this city might or may lose their custom or advantages. Ye shall know no foreigner to buy or sell any merchandize with any other foreigner within this city or franchise thereof, but ye shall warn the chamberlain thereof, or some minister of the chamber. Ye shall implead or sue no freeman out of this city, whiles ye may have right or law within the same city. Ye shall take none apprentice, but if he be free-born, that is to say, no Bondsman's son, nor the child of any alien, and for no less term than for seven years, without fraud or deceit, and within the first year ye shall cause him to be enrolled, or else pay such fine as shall be reasonably

assembly, "the county court of the city."* But the communia which gave a commonalty to the city councils, had conceded to the citizens an active power, vast in its growing importance, and which now, aided not improbably by their powerful combination in crafts, contested this control, insomuch that, having broken down the proprietary aldermanries to an annual election,† the commonalty ob-

imposed upon you for omitting the same. And after his term's end, within convenient time (being required), ye shall make him free of this city, if he have well and truly served you. Ye shall also keep the king's peace in your own person. Ye shall know no gatherings, conventicles nor conspiracies, made against the king's peace, but ye shall warn the Mayor thereof, or lett it to your power. All these points and articles ye shall well and truly keep, according to the laws and customs of this city, to your power. *So God you help.*

* 1 Mod. Rep. 320.

† 1 Chart. Edw. II, § 5. That the aldermen be removed from year to year on St. George's day, and not re-elected; and others chosen by the same wards. By ordinance of the King in Council, 28th Edw. III, aldermen were not to be removed without cause; but in 1383 (7 Rich. II), cause being found, most, if not all of them were turned out by the Common Council, and others elected by the *probi homines* of the wards:—Again, in the 16th of the same reign, the mayor and many other aldermen were dismissed and severely dealt with on a charge of misgovernment (*Pat.* 16 R. II.) The annual election does not seem to have prospered, for in the year following, by stat. 17 R. II, c. 11, for certain causes him especially mov-

tained for themselves a discretionary power as to the admission to the incorporated civic freedom of any, save the men of the mysteries, and "apprentices who had served their

ing, and for the better government of the said city in time to come, the King willed and ordained, by the advice of his Council, &c., that henceforth the aldermen be not ousted or removed from their said office every year, nor at all removed without good and reasonable cause. And thus the ancient tenure was again approached in a conditional life tenancy, which has since prevailed.

By the *Stat. Civ. Lond.* (13 Edw. I), the magisterial duties of aldermen are found to have been upon the proprietary principle, viz. each alderman having authority in his ward, and the mayor over the whole city.

By the confirmation charter of the 6th Edw. III, the mayor for the time being was declared to be one of the justices assigned for the gaol delivery at Newgate.

By charter of Edward IV, all aldermen who have been mayor are constituted conservators of the peace; and in consideration of their duties as aldermen within the city, and their need of quiet and relaxation in retirement at their possessions in the country, they are exempted from serving in any respect as jurymen out of the city, to which their residence would otherwise subject them.

By charter of Edw. VI, the mayor, recorder, and aldermen who have passed the chair of the city, are constituted justices of the peace throughout the limits of the borough of Southwark. Upon the grant of this charter, the court of aldermen added another to their number, and erected Southwark into a new Ward of the liberties of the city, by the name of Bridge Ward Without (*Str. Stowe, v. II, p. 2*). The Common Council then passed a Bye-law, placing the election of the alderman of Bridge Ward Without in the inhabitants; but in the reign of Philip

time,"—cases which seem to have been recognized as legitimately entitled to the civic "enrolment," in exception to "strangers not of any certain mystery or trade," who were only

and Mary, another ordinance replaced the election in the court of aldermen (*Ibid.*) The city jurisdiction over the borough of Southwark not being exclusive of the authority of the justices of the county of Surrey, the office of alderman is merely nominal—the honorary sinecure of the senior member of the court.

By the second charter of James I, the mayor and recorder are constituted two of the quorum at sessions.

By the 1st charter of Charles I, the mayor, recorder, and aldermen who have passed the chair, and the three senior aldermen who have not passed the chair, are to be keepers of the peace and justices; and that they or any four, of whom the mayor or recorder shall be one, are constituted justices at sessions.

By charter of the 4th of William and Mary, reciting the first charter of Charles I, the six senior aldermen who had not passed the chair are appointed justices of the peace, provided they had served the office of sheriff, in addition and next to the ~~three~~ appointed by the 1st charter of Charles I.

The charter of 15 George II, after reciting the two preceding, constitutes all the aldermen for the time being justices of the peace, and appoints the mayor, recorder, and all those aldermen who have passed the chair, of the quorum—the two previous charters having required either the mayor or recorder to be of the quorum. And thus it is that the business of the Central Criminal Court cannot proceed without the presence of a city alderman, who represents in his person the now merely nominal right of the city, "to hold the pleas of the Crown."—*Chart. HH. I & II, R. I, &c.*

to be admitted by the special concurrence of the "commonalty," or representative body.

These regulations, which appear to have been operating bye-laws of the city in the reign of Edward I, received the royal sanction by charter in the following reign; and this, denominated the first charter of Edward II, in a very particular manner embodied the principle of the civic constitution, as a commercial or trading communia. The seventh section of this charter bears upon the special freedom, as above stated, viz. :

§ 7.—That no stranger be admitted into the freedom of the city in the Hustings; and that no inhabitant, especially English merchants of some Mystery or Trade, be admitted into the freedom of the city, unless by surety of six honest and sufficient men of that mystery or trade he shall be of, who is to be so admitted into the freedom; which six men may undertake for him of keeping the city indemnified in that behalf. And that the same form of surety be observed of strangers to be admitted into the freedom in the Hustings, if they be of any certain Mystery or Trade. And if they be not of some certain Mystery, then that they be not admitted into the freedom without the consent of the commonalty. And that they who have been taken into the freedom of the city (since we undertook the government of our realm) contrary to the forms prescribed; and they who have gone contrary to their oath in this behalf, or contrary to the state of the city, and are thereof lawfully convicted, lose the freedom of the said city. Saving always that, concerning apprentices, the antient form and manner of the said city be observed.—*Pat. Rot.*, 12 *Edw.* II, *P.* 2, *m.* 2.

The eighth section particularly identifies the exclusively trading character of the special freedom :—

§ 8.—That each year in the same city as often as need shall be, enquiry be made, if any of the freedom of the same city exercise merchandizes in the city, of the goods of others not of the same freedom, by calling those goods their own, contrary to their oath, and contrary to the freedom of the said city ; and they that are lawfully convicted thereof to lose the freedom of the said city.—*Ib.*

The ninth and tenth sections annex to the trading freedom the lot and scot liabilities of the householder of the wards, as arising from the occupation of premises to which those liabilities appertained, whether by actual residence, or solely for the purposes of those special privileges of trade appertaining to the city freedom :

§ 9.—That all and every one being in the liberty of the city, and that would enjoy the liberties and free customs of the said city, be in Lot and Scot, and partake of all burthens for maintaining the state of the said city and the freedom thereof, according to the oath they have taken when they were admitted to their freedom ; and whose will not, to lose his freedom.

§ 10.—That all and every one being of the freedom of the city, and living without the city ; and that either by themselves or their servants exercise their merchandizes within the city, be in Lot and Scot with the commoners of the said city for their merchandizes, or else to be removed from their freedom.—*Ib.*

The two latter of these clauses have already

been noticed* in the introductory argument, to which they particularly apply, as establishing the liabilities and franchise of the citizens to have rested upon a somewhat better foundation than mere technical quibble. Bohun, however, taking each clause and requirement as composing a distinct right, discovers "five manner of citizens," as arising out of the well-known case of discharge from the prisage of wines,†—some of them curious enough; but they all seem to resolve into the simple re-

* Antè, p. xxvi.

† The prisage of Wines was a custom or duty on the importation, called *Prisa*, or *Recta Prisa*, viz. one doli-um before the mast, and another behind the mast, called *Prise Wines*, or the King's Wines—from the payment whereof the citizens of London were exempted by letters patent of Edward III; and for the evasion of which duty, foreigners, and merchants resident abroad, obtained the city freedom. Hence arose a classification as against them, and freemen of London resident at the outports, which could have no other reference than to the terms of the charter of Edw. II, in the protection of the citizens in Scot and Lot, who contributed to the state of the city. The "five manner of citizens" are described as follow:

1.—He that is a citizen of London, for bearing the offices of the city, and to such special intents, because he is a freeman of the city; but if he is not a citizen in residence, but liveth elsewhere, such a citizen shall not be discharged of Prisage.—*Trin.* 4, 5, 6; *Rot.* 14.

2.—Such as are citizens in respect of their freedom, and likewise in regard of residence within the city, but do not keep a family or household in the city, but are inmates or sojourners, such citizen is not capable of this immunity;

quirements of the charter, viz. the special freedom, and the Lot and Scot liabilities for maintaining the state of the city.

The advocates of the resident freemen, indeed, founded a kind of negative proof of their case upon the circumstance, that there are in the city books several instances of disfranchisement "for living out of the city;" as for instance :

11 Hen. VI, 7 Feb.—An Act for disfranchising freemen living out of the city.—*K.* 125, *Leg.* 82.

8 Hen. VIII.—An Act for disfranchising citizens that live out of the city.—*N.* 17, *Leg.* 127 *b.*

18 Hen. VIII, 1 June.—One disfranchised for living out of the city liberty.—*H.* VIII, *O.* 3.

37 Hen. VIII, 17 June.—Freemen with their families

for such citizen is not subject to Scot and Lot, as he is not a householder.—43 *Eliz.*, *Rot.* 22.

3.—*The third sort are such as do reside and keep a family in the city, but are not freemen of the city, so as to be chosen into any office; they are not capable of the discharge of prisage.* [153] These were "*citizens of the leets.*"

4.—Some are citizens and freemen, and do reside or keep families in London, and are not continuing citizens at the time of the bulk broken, and the ship unladen—for they were disfranchised before; these shall not enjoy the privileges, forasmuch as they were not continuing citizens at the time as the prisage ought to be taken.

5.—Such as are citizens and freemen resident with families, and continuing citizens at the time as prisage ought to be taken; these are such as are intended by this charter.—*Priv. Londini*, p. 156.

dwelling out of London by the space of a year, to be disfranchised.—Q. 138, *Leg.* 204.

6 Eliz., Aug. 30.—Freemen dwelling a year out of the liberties (except in case of sickness or merchandize, or other good cause, to be allowed by the court of aldermen) to be disfranchised. Former Acts repealed.—*Jo. Whyte, fo.* 255.

All these cases, however, seem to bear upon the same conditional liability for the special franchise conceded, and to find their explanation in the following document :

Articles for ye Reformation of things P'iudicall to the Cytee, 13 Hen. VII, 1498.

In consideracion that the cite is broght to gret ruyn and decay, bi that so great numb're of freem' dwelle and abyde out of the libertees and fraunchels of the cite *that bere lotte nother scotte contribucio's offices nor other charges* withe freemen reseant w'in the cite, as bi solempne othe eueri freeman is bounde to do, wheryn if remedy be not prouided the citee is lyke to be brought into desolacion and utterly fordoon. Whereupon it was required to be enacted yt all fremen should henseforthe abyde, dwelle and kepe their principall residenc, enhabitation and howsold w'in this citee or franchises thereof, beri'g euerych after his abilite all maner charges as other freeme' reseant do bere vpo' peine to be diffraunchis, &c.—*Arnold's Chron.*

And so long previous, as the reign of Richard II, the special trading freedom being considered in the spirit of the charter of Edward II, not more as a local than a personal franchise, an act of Common Council had provided for the general assessment of its members "living out of the city" :

3 Rich. II.—All freemen living without the city to be assessed by the lord mayor and aldermen to all taxes to be applied to the Wards; and to be disfranchised if they bring it not to the day.—*Lib. H.* 120.*

Nor was the city of London peculiar in a circumstance, which seems to have been a common quality of a general merchant gild.† The learned commentator, however, so frequently quoted in these pages has stated, that “there is no trace of any mercantile incorporation of London, nor of its ever having been a general mercantile gild.”‡ Perhaps the statement

* It was also a charge to the Wardmote Inquest Jury, not only to make presentment of all non-freemen exercising the privileges of the special freedom, but also of “every freeman who receives or takes the benefit, and enjoys the franchises of the city, yet is continually dwelling out of the city, *and has not nor will not* (after his oath made) *be in Scot and Lot, nor partner to the charges of this city when he is duly required.*”

† Burgesses using the Mercate of Wallingford to perform all duties to the guld, and be judged according to the rules and laws of it, *whether they live within the borough or not.*—*Chart. of H. III to the burgh of Wallingford.*

‡ Comm. on Lond., p. 34. What materially contributed, says Mr. Norton, to impose a trading character on the corporation of London, was the granting so many *peculiarly commercial privileges* to the citizens by the charters. As these privileges could only be enjoyed by persons engaged in trade, or in other words *the members of the Companies*, the grant to them would naturally lead to the conclusion, that the civic body was to be considered

may be taken rather as a technical objection, than as of reference to the operating fact: for at what position has the evidence arrived? The wards, or proprietary districts into which the "citizens of the leets" had hitherto been subdivided, no longer had the same character of territorial jurisdiction, nor the same quality of inhabitants. The principal feature of the 'aldermanries, in respect of their distinct government, had been superseded, and their utility in others had become obsolete. With

as one concentrated mercantile gild, composed of many gildated subdivisions,—instead of a concentration of territorial gilds or leets, which, in a political and more constitutional sense, it really was. The city being thus engrossed by the members of the various trading companies, it was obviously their joint interest to exclude from the participation of their chartered monopolies, those who had not earned or paid for their fellowship in one or other of their associations. By these means, not only was their number limited and competition restrained, but the more immediate advantages of the service or purchase money of the candidates were gained (*ib.*, p. 139; *vide ant.*, p. clviii, n.) It is needless to attempt the refutation of an argument, which the commentator has himself elsewhere controverted, by entering into the full spirit of the commercial communia, and repudiating the "political and constitutional territorial jurisdiction" he had upheld, truly as the mere "medium of police government." "That exclusive privileges of trading," says he, "are absolutely necessary for the preservation of the corporation as an active representative body, is so obvious as to require little illustration. The city of London can exist

the rise of the special city freedom, a new classification had taken place. The simple frankpledge of the Wards was no longer a citizen. The special trading freedom, introduced, it is said, from the civil law, and found in operation by the earliest city records, was required to be superadded; and that, by charter of Edw. II, was associated with the membership of the mysteries or gildated crafts. A general gild merchant, if of no earlier institution, it is submitted, was thus created—or if, as it

only by its trade; the mass of its useful and productive inhabitants must ever be composed of traders; and it is out of these individuals that the corporators must be chosen, if they are to represent the real interests of the city. The local advantages which distinguish it as a place of commerce, are sufficient to attract inhabitants in considerable numbers; and such local advantages will in all probability ever exist. *If, however, strangers who may find emolument in carrying on trade there, are allowed to do so at their discretion, without incurring the expense and burthen incident to the assumption of the civic freedom, the number of non-freemen will go on increasing in proportion to the superior local or natural advantages afforded to commercial pursuits, until the original freemen are nearly or altogether supplanted. The Corporation may then exist—but no longer as the Corporation of London, except in name. It will represent no common interests, still less those of the mercantile population of England. The most honorable distinction it can then enjoy will be that of an association of proprietors, or of being the medium of police government.—Com. on Lond., p. 237.*

seems reasonable to presume it to have been, of earlier and progressive growth, was then confirmed,—composed of a recognized combination of the gildated crafts, through whom members of the city freedom were to be received, and to whose members alone the special liberty of trading was conceded. In the wards they were still frankpledges; but there, beside the constituted citizens of the trading liberty, were also householders who disclaimed citizenship,*—and inhabitants, “common harbourers, not citizens, who were nevertheless subject to civic burthens for maintaining its state, like other inhabitants, in respect of their dwellings.”†

Thus, while the aldermanries or wards had gildated the inhabitants of all denominations into freepledges only, the city mysteries divided the freemen from the non-freemen, and

* Antè, p. clx, n.

† 1 Chart. Edw. II, § 16.—That the common harbourers in the city and suburbs, although they are not of the freedom of the same, be partakers of the contingent burthens for maintaining the said city, according to the state of it, as long as they shall be so common harbourers, as other like dwellers in the city and suburbs shall partake, on the account of their dwellings. Saving always, that the merchants of Gascoigne and other foreigners may, one with another, inhabit and be harboured in the said city, as hitherto they have been accustomed.—*Pat. Rot.*, 12 *Edw.* II, p. 2, m. 2.

associated the citizens into so many clans, professing one common interest in the welfare of the city, as a general community of traders, which the mere inhabitant, frankpledge of a ward, who might be a non-freeman or foreigner, could not be supposed to have. And this consequence seems to have operated reciprocally to one principle, subservient to the special city freedom; for while the livery companies were composed of the freemen-householders of the wards, in their several crafts, the scot and lot traders of the wards, doing suit and service at the wardmote courts, are found to have passed from the simple condition of frankpledges to that of freemen of the crafts, by necessity,—and into liverymen as householders, by election: and hence it is, that the Wardmote Inquest Juries of the present day are found in possession of the livery gown, to which, by the original constitution of the Wards, and the Leet services of the tenants whom they represent, in no way appertained to them.* It is, therefore, deceptive

* At the presentation of the Wardmote Inquest Juries to the Court of Aldermen, on Plough Monday, 1841, certain of the Inquest-men were reprimanded for their disrespect to the Court, in appearing without the livery gown. Whether they had, indeed, followed scriptural advice, and, as they pleaded, parted with their raiment for the good

to draw a distinction which did not exist in fact—and fallacious to call that an usurpation, which, as a new classification of the same persons, operated only to divide the citizens (traders in scot and lot, or householders) from the freemen, and the freemen from the non-freemen or foreigners,—distinctions which had existed, and ineffectually had been attempted to be preserved in the wards, by the classification of householders or tenants of the leet, as distinct from the simple frankpledge or inhabitant.†

The collocation of artificers in their respective mysteries, which in some instances, by their charters, had become entire local incorporations of the craft, seems to have attracted the notice of the government as a measure of efficient rule, and to have been made peremptory, in furtherance of that system of legislation respecting them which had previously and repeatedly formed an inoperative measure of Parliament.* And that power which the direct ramifications of the executive of the poor, or that any other motive which occasionally breaks through established custom, may have been the true reason; certain it is, that however unwittingly—the *dissenters were right*.

* Stat. Artific., 23 Edw. III, c. 5 & 8; 25 ejusd., c. 5 & 8; 34 ejusd., c. 10, &c.

† Antè, p. lxxiii.

government found it difficult to exercise individually over the diffused body of the artizan people, was readily to be put in force in their associated crafts, under the immediate supervision of the Master and Wardens, to whose surveillance they were bound by the oath of admission to the gild;* hence the 37th Edward III declared :

“ That artificers and handy craft people shall hold them euerye one to one misterye, whiche he wyll chose betwixt this and the said feaste of Candlemas. And ii of euerye crafte shall be chosen to suruey that none use other craft than the same,” &c.—c. 6.

* The Oath of the Freedom of the Craft :—

You shall be true and faithful to our sovereign lord the King, and to his heirs and successors. In all matters lawful and honest, you shall be obedient to the Master and Wardens for the time being in that office ; and obedient and ready to come to their lawful summons, except you have lawful excuse, without feigning delays : or else you shall pay such penalties as you shall forfeit by your disobedience, according to the lawful ordinances of this your craft ; which ordinances, and every of them, you to your power shall observe and keep ; or else as is afore-said, pay such fines and penalties as you shall forfeit by reason of your disobedience, or breaking of the same. All the lawful secrets of the said Fellowship, and all such things as at any time of assembly shall be lawfully in communication amongst the Fellowship at the Common Hall, you shall keep secret, and not disclose the same to any of that fellowship, and especially to any such person whom the same in any wise doth concern or touch, or to any manner of person whatsoever. *So help you God.*

Here, not only was the peremptory classification enjoined by parliamentary enactment, but a supervisional power in the mysteries, by the same institution, tended greatly to add to the recognized authority and importance of those institutions as the executive of the Crown, with which they were afterwards in so many instances invested.*

At a later date, the principle of this enactment is found to have been enforced by a

As the men of the mysteries were sworn to their Master and Wardens, so were the Wardens bounden unto the city :

The oath of the Wardens of the " city Crafts."

Ye shall swere that ye shall wele and treuly or'see the craft of ———, whereof ye be chosen Wardeyns for the yeere ———. And all the goode reules and ordyn'nces of the same craft that been approved here be the Court and non other ye shal kepe and doo to be kept. *And all the defautes that ye fynde in the same crafte ydon, to the champleyn of ye citee for the tyme beyng ye shall wele and treuly p'sente, sparyng noo man for favour ne grevyng noo p'son for hate. Extorcion ne wrong under colour of your office ye shall non doo, nether to nothing that shalbe ayenst the stat peas and profite of oure sovereign lord the king or to the citee ye shall not consente, but for the tyme that ye shall be in office, in all things that shalbe longyng unto the same craft, after the laws and ffraunchises of the seide citee welle and lawfully ye shal have you. So helpe you God and all seyntes, &c.—City Rec., lib. ix, fo. 46.*

* Antè, p. ccxxliii, n.

Bye-law of the city, passed the 7th Feb., 11 Hen. VI (1432), declaring—

“That none shall be admitted to the freedom of the city but in the proper Companies, whose art they use and intend.”—*K. 125., Leg. 82.**

And, as the most ready means of ensuring the due execution of the rule, the same Bye-law enjoins—

“That none be admitted to the said freedom, but upon

* The Plumbers, an ancient Brotherhood, but incorporated only by James I, in 1611, is described as “an entire Company of that trade, admitting none to be free that are of others, nor are any of their trade free of other Companies (*View of Lond.*, 1706); and an act of Common Council of 1658, regulating the Needle Makers (incorporated during the Protectorate, or 8th Charles II), directed that every Needle Maker *free of the city*, of whatever Company he should be, thenceforward should be subject to the search and survey of this Company; that no Needle Maker of any other Company should bind an apprentice to himself, till he had first bound him to the Master and one of the Wardens of the Needle Makers’ Company, who should turn over such apprentice to him before the Chamberlain of London, in order that such apprentice might be made free of the Needle Makers’ Company, &c.

Beside the instances of the entire companies of citizens before cited with another object (*antè*, pp. cevi, ccxli, &c.), it may be right here to note a few other of the ancient fraternities, as illustrating the general principle:

The Armourers, a fraternity of ancient date, was incorporated by Hen. VI (who was a brother of the gild) in 1423, by the style of “The Masters and Wardens, Brothers and Sisters, of the Fraternity or Guild of St. George, of the

presentation of the Wardens of Companies, except officers, and such as are no common merchants."

Thus, the commercial constitution is found established upon one principle of reciprocal action, which seems to have operated as an effectual safeguard of its special freedom, in

Men of the Mysteries of the Armourers of the city of London."

The Vintners, anciently the Merchant Wine Turners (Vintonners—*Stowe*) of Gascoyne (the *Veneatrit* or importers, and the *Tabernarii* or retailers), existed by letters patent, 38 Edward III, "for the hinderance of any other to deal in Gascoin wines, but such only as were *enfranchised in the craft of the Vintrie*." They were incorporated in 1437, 16 Hen. VI, by the style of "The Master, Wardens, Freemen and Commonalty, of the Mystery of *Vintners of the city of London*."

The Carpenters were incorporated 17th Edw. IV, 1477, by the name of "The Master, Wardens and Commonalty, of the Mystery of the Carpentry *of the city of London*."

The ancient Fraternity of the Turners were incorporated by James I, in 1604, by the name of "The Master, Wardens and Commonalty of the Art and Mystery *de lez Turners of London*."

An act of Common Council of the 6th William & Mary declared that, "whereas the Master and Wardens of the Guild or Fraternity of the Blessed Mary of Plasterers of London, are and very anciently have been a brotherhood or guild, and for confirmation or strengthening of their privilege have obtained several royal grants; *whereby, and by their original constitution*, the said Fraternity or Guild ought to be and consist of *all persons using the trade of a plasterer within the city of London and the liberties thereof*."

the spirit of the charter of Edward II; for while none could obtain the special freedom to trade, but by the introduction, or by being member, of the gildated mysteries; the same principle required that the incorporated crafts, having that right of introduction, should be composed wholly of its special freemen.* And this result naturally leads to the very conclusion, which it has been said may not be entertained, viz., "that the civic body was to be considered as one concentrated mercantile gild, composed of many gildated subdivisions"—instead of a concentration of territorial gilds or leets, which, it is contended, "in a political and more constitutional sense, it really was."† But, as one institution becomes obsolete, and is superseded by another, so the political importance of the trading companies seems to have arisen out of the inefficiency of the territorial leets, as the discriminating medium of the special civic franchise,—and to have wholly supplanted them, only when a long series of merely nominal participation in the communia of civic rule had aggravated, and at length aroused a struggle, which gave political power to the

* Antè, p. cexxx.

† Antè, p. cclxv, n.

classified citizens, on whom the burthen and responsibility of maintaining the state of the special incorporation had properly devolved.

To the established predominance of the trade classification of the citizens for general corporate purposes, may probably be attributed the erection of the *new burī*, or *gilda aula*, upon its present site in the 12th Hen. VI (1411); and it is a circumstance strongly corroborative of the present argument, that while the several companies, together with the mayor and aldermen, were contributors to the expense of the new and extended building, there *does not appear to have been any assessment upon the Wards* towards the accomplishment of an object, evidently identified with the congregation of the citizens of the gilds. Indeed in this instance, as afterward, as the Companies comprised the citizens, so were they assessed and bore their civic burthens; while *the unfreemen and foreigners were taxed in the Wards* to their several liabilities, in respect of their dwellings.* The transition of the civic assessment is the more particularly identified with that of the political franchise, inasmuch as, in the 13th Edw. III (1339), a very considerable assessment upon the Wards is known to have

* 1 Chart. Edw. II, § 16, ante, p. cclxviii.

taken place;* and twelve years later, viz. in 1351 (25 Edw. III), is found the first precept

* In 1339 (13 Edw. III), the Parliament granted the king a general subsidy, when the city advanced 2,000 *marcs* present money, on the credit of that proportion of the aid to be raised upon the citizens, which was assessed upon the Wards as follows :

Tower Warde	£ 365	0	0
Byllyngsgate Warde	863	0	0
The Bridge	765	6	8
Dowgate Warde	660	10	0
Langbourne Warde	352	6	8
Walbroke Warde	911	0	0
Bishopsgate Warde	559	6	8
Limestrete Warde	110	0	0
Cornehill Warde	215	0	0
Chepe Warde	517	10	0
Bradstrete Warde	588	0	0
Vintrie Warde	634	16	8
Bredstrete Warde	461	16	8
Quenehith Ward	435	13	4
Cordwaynerstrete Ward	2195	3	4
<i>Faringdon within</i>	730	16	8
„ <i>without the walles</i>	114	13	4
Crepelgate Warde	462	10	0
Colmanstrete Warde	1051	16	8
Candelwike Strete Warde	133	6	8
<i>Algate Warde</i> (leuled of vi enhabitauntes of that warde)	30	0	0
<i>Portoken Warde</i> (leuled of vii persons of that warde)	27	10	0
Castel Baynarde Warde	63	6	8
Bassingshaw Warde	79	13	4
Aldryshgate Warde	57	10	0

Fabyan, Chron., p. 7, p. 207.

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to the Companies, to "consult on the business of the city." If, in subsequent years, when the Companies of the citizens are found in the exercise of the political franchise, they are found also, in the terms of the charter of Edward II, assessed to all burthens for maintaining the state of the city, it will be difficult so far to separate a liability from its consequence, as to say they are not the representatives of the same citizens to whom the special trading freedom had been originally conceded—as also of the "citizens of the leets," whose liabilities had devolved to them. To bear out this result, the following may be cited:—

In 1556, 2 & 3 Phil. & Mary, The Companies were taxed by the Lord Mayor and Aldermen, for fitting up Bridewell.

In the same year, An assessment on the Companies towards setting on worke of the workefolkes in Brydewell.

In 1565, 7 Eliz., The Companies assessed towards erecting the Burse.

In 1566, 8 Eliz., The Queen commanded the city to equip 100 soldiers for the service in Ireland—furnished by the Companies.

In 1569, 11 Eliz., The Companies assessed towards cleaning the city ditch between Portsoken and Aldgate.

In the same year, By the Queen's command, 100 soldiers for the service in Ireland—supplied by the Companies.

In 1575, 17 Eliz., A forced loan to the Queen. By precept from the Mayor, levied "on the stock of the Com-

panies, or to be raised by them at interest"—but not to be assessed on the Brothers. "These precepts and other resources produced to the Queen 140,000*l.*, apparently more than she knew what to do with: however, herself or her ministers found an expedient, namely—to *force the citizens to receive it for a year or more at 7 per cent.*, in sums of 500*l.* to 50*l.* each person, on pledge of gold or silver plate, or other ample security."—*Lond. Rediviv.* v. ii, p. 50.

In 1579, 21-2 *Eliz.*, *The Companies* charged by act of Common Council towards the expense of the city entertainment to Prince Casimir.

In the same year, 3,000 men provided by the city for the defence of the queendom—*raised by the Companies*. The Ironmongers' proportion amounted to 73 men, with calivers and shot—and 38 with coralets, fully furnished with pikes, swords and daggers.

In 1585, 27 *Eliz.*, By the account of the "Must^r of London," returned by Sir Thos. Pulloccel, mayor, it appears that 5,000 men were raised *by the Companies, Mysteries, and Brotherhoods*; besides a charge of 5,023*l.* 4*s.* 3*d.* for arms, wages and victuals. *The unfreemen and foreigners taxed in the wards*, in the sum of 289*l.* 3*s.* 2*d.**

* The exceedingly great disproportion in the respective liabilities of the Companies and the Wards seems to infer, that the latter had been almost wholly swallowed up in the crafts—so completely had been the re-construction of the city, in the transition from "citizens of the leets" to special freemen and citizens of the mysteries. The number of unfreemen residing in the wards, may probably be estimated from a statement made a few years afterward (in 1590) on account of the plague, when the number of strangers in the city and liberties, upon certificate from all the wards, appeared to be 5,250, of whom 267 were denizens born.

In 1589, 31 Eliz., The Queen in Council ordered the city to furnish 20 lasts of gunpowder, to be ready for emergencies—supplied by the Companies. The Ironmongers' Company furnished 1920 lbs. at 10d. per lb.

In 1591, 33 Eliz., At the Queen's request, six ships and one pinnace equipped at the cost of the city. 7,400l. levied on the Companies.

In 1599, 41 Eliz., The Queen demanded a loan of 20,000l. from the city upon her bond, for six months, towards the defence of the country, and suppressing the Irish rebellion. Granted without interest, and levied on the Companies.

In 1603, 1 James I, The Companies assessed in 2,500l. for the coronation of the King. The same year, 800l. more for the same service; and 500l. to be lent by the Companies, for the relief of infected people at the time of the plague.

In 1608, 6 Jas. I, The Companies to provide 10,000 quarters of wheat, and every citizen to provide a bushel of wheat for every pound assessed in the King's books. At an earlier period, the Companies had been customarily required to lay in large stores of corn and coals, to supply the markets during the winter season, and prevent the rise of prices to the oppression of the poorer citizens. In times of contemplated scarcity, even their halls were converted into granaries.

In the same year, Granaries to be provided at Bridewell, at the Companies' charges.

In the same year, 2,000l. to be raised on the Companies, for finishing granaries at Bridewell.

In 1616, 14 Jas. I, 5,000l. raised on the Companies, for the plantation in Ireland.

In 1628, 4 Charles I, 4,300l., the expense of the pageant when the King passed through the city—assessed on the Companies.

In 1633, 9 Charles I, A fine of 1,000l. imposed by the

King's Bench, for not securing the murtherers of Lamb—
*levied on the Companies.**

In 1640, 16 *Charles I*, The city required to make loans to the King to the amount of 200,000*l.* 50,000*l.* raised by *contribution of the Companies*. Some estimate of these assessments may be formed, from a precept directed by the Mayor to the Ironmongers' Company, requiring them "to pay 1,700*l.* in five days at furthest, for the important affairs of the kingdom." The amount was raised by loans at 8 per cent., and assessments on their members.

In 1642, At a Common Hall held at Guildhall, by order of the two houses of Parliament, a loan of 100,000*l.* for a year, at 8*l.* per cent., on the faith of Parliament, was agreed to; and *assessed on the Companies*. The assessment on the Ironmongers' Company was 3,400*l.*

In 1643, The same Company assessed at 9*l.* 10*s.* per week, for four months.

In *August of the same year*, An assessment of 1,700*l.* (part of 50,000*l.*, required by parliament) being made on the same Company,—they having exhausted nearly all their resources, endeavoured to borrow 1,300*l.*; but no man belonging to the hall would lend: and in 1644 they sold all their plate for 153*l.* 7*s.* 3*d.*—*Rec. of the Ironmongers' Comp., Lond. Redit., v. ii, p. 55.*

In 1668, 18 *Charles II*, 10,000*l.* towards building the Loyal London Ship—*levied on the Companies.*

* This case more particularly affords curious matter for argument, against the opinions attributed to certain of the learned judges in Plumbe's case, as to the connexion between the incorporated companies and the incorporated city (*vide p. cclxxii.*) Either "the Companies" were incorporations—and had taken the place of, the genuine frankpledges of the Wards, to whom, under the Saxon custom and subsequent laws, the liability appertained, or the fine levied upon them was levied in wrong. *Quære*, did "the Companies" plead the early charters to the citizens, "to be acquit of Murder"?

Beside these and numerous other instances which might be cited, of the extraordinary scotting of the London Companies to the charges levied in and upon the city, the "Fraternities, Guilds, Corporations, Mysteries, Brotherhoods and Companies," were, in the 2nd & 3rd Edw. IV, 7th Edw. IV, 2nd & 3rd Phil. & Mary, and in the 5th, 18th, 27th, 29th, and 43rd Eliz., assessed to the subsidies levied respectively in those years.* Thus it may fairly be observed that, whether the transition from a territorial to a trading classification of the citizens may be termed an occurrence of accident,† or that the super-

* Brady on Cities and Boroughs.

† In delivering his opinion in the case of Mr. Alderman Plumbe, July 7, 1775, the Lord Chief Justice De Grey is reported to have said: ["Thus far we know that] the constitution of the city of London does not contain these Companies, [*I mean originally*, and from their charters and all prescriptive rights; it is by subsequent accident that they came now to bear the relation they do to their Companies as Livery. The Livery are not formed out of their Corporate body; for whatever their constituent parts, their obligations, duties, powers, customs, and rights are, either as altogether, or as individuals] they are no part of the city customs or rights, but a subordinate, detached, and independent body: [*I mean independent with regard to their original institution.*].—Payne, *Treat. Municip. Rights*.

Mr. Newell, in his advocacy of the freemen, cited this case, to prove "*that the Livery Companies formed no part of the Corporation of the city of London;*" and that

cession by the gildated crafts, of the franchise which had hitherto been exercised representatively by the Wards, may be stigmatized by the harsher term of an usurpation, it must nevertheless be admitted that the usurpers did not take the privileges, without also adopting, and relieving the Wards from, the attendant

“the liverymen meeting in Guildhall did assume the right or rights that only belonged to the Mayor, Aldermen, and Commonalty or *Freemen* of London.” The following information is curious:—“It became a disputed point with the Government,” he continues, “whether they should exercise those rights, so assumed; and in consequence of the opinion of the judges having been taken, as to whether they did possess the rights of citizens, four judges out of the five (the other having resigned) determined that the Livery Companies formed no part of the Corporation of London.” The misrepresented facts are not so material in themselves, as that Mr. Newell, whose vulgar charge against Dr. Brady has been noticed (*antè*, p. clxxxviii), laid himself open to his own rebuke, by suppressing so much of the opinion of the learned judge, as completely to alter its qualified sense and tendency. Omitting the words enclosed within the brackets, Mr. Newell, in his pamphlet, which he curiously enough called “*Facts and Arguments*,” &c.), quotes the judgment thus:

“Lord Chief Justice De Grey said: the constitution of the city of London *does not contain these Companies*—they are no part of the city customs or rights, but a *subordinate, detached, and independent body*.”—*Lib. cit.*, p. 18.

The occasion of the learned judges delivering their opinions, was upon a judgment in error, which reversed the disfranchisement of Mr. Ald. Plumbe, upon the prosecution of the Common Serjeant in the Lord Mayor's court, for refusing to summon the livery of the Goldsmiths' Com-

liabilities; and to an extent that fully bears out the representation of the Twelve Livery Companies, who, in their petition of the year 1650, truly stated, as the qualification and title of their electoral position, "that the said Companies have from time to time hazarded their persons, exhausted their means, and freely

pany (of which he had been at the time Prime Warden) to attend the Guildhall, to hear His Majesty's answer to the humble address and remonstrance of the Corporation of London, in the mayoralty of Mr. Ald. Beckford. Mr. (afterwards Lord) Mansfield for the plaintiff in error, contending that his client was not subject to disfranchisement for not obeying the Lord Mayor's precept, to summon the livery of his Company upon the occasion mentioned, for that *the only legal business of convening the livery was to elect their members of parliament, magistrates and other officers, and that all other corporate business of the city came under the cognizance of the Common Council.*

The Lord Chief Baron Smythe delivered his opinion; that "the Livery could neither address, remonstrate or petition, as a corporate body; for, as he found by all the instances, those who met for corporate purposes were the Mayor, Commonalty and Citizens, of the city of London, and in this corporate name no mention at all is made of the livery." It is not the less true, however, that the citizens referred to in the incorporation of "Mayor and commonalty and citizens of London," under the 2nd W. & M., for "reversing the judgment in a *Quo Warranto*," &c., were the citizens of the incorporated *Mysteries meeting in their Liveries*, under the city Bye-laws in that behalf made; who, "according to the usages and customs of the said city, and their respective Companies," were restored to "all the privileges of freemen and liverymen, to all intents and purposes," &c.—*Sect. 10, 14, 15, 16.*

undergone all services, taxations, and charges imposed upon them:—that they are for the most part the *ancientest and most able citizens* of this citie, and do undergoe, as always they have done, the greatest part of the charge and service within the same.”*

RESUMING the continuity of evidence on the electoral franchise, at the point where it had been suspended† for the purpose of introducing the Incorporated Gilds, and bringing up their progressing importance to the same period of time, the following deductions from the foregoing testimony may be premised :

1.—That from the known period when burgesses were first summoned to parliament,‡

* London Liberties, &c., 1682. So disastrous had been the consequences of the civil war, not only to the city companies, whose resources had been exhausted and their credit so severely involved; but the report of the committee appointed to investigate the city corporation accounts in the year 1649, found the Chamber of London indebted “to the Orphans,” 169,654*l.* 1*s.* 5½*d.*; to other persons, for principal money, 94,412*l.* 13*s.* 4*d.*,—and altogether, that the Corporation was involved in a debt total of 455,148*l.* 12*s.* 2*d.*, “lost and expended in twenty years.” Vide *p.* 109, *n.*

† Antè, *p.* cxvii.

‡ 23 Edw. I. It has not been thought necessary to enter

and the also known condition of the elective franchise a few years later,* when the representatives of the city of London were returned by "the Mayor, Aldermen, and *six of the better and more discreet men of every Ward*," who then formed "the community of the said city,"—it is not probable that they had ever been returned by the direct voice of a more general assembly, as it very generally has been *assumed*, in the absence of any evidence of such a fact.

2.—That the election of sheriff, by the early city charters granted to the "citizens"†

into any investigation of the theory, that the boroughs were represented in parliament at an earlier period; for supposing, as it has been assumed from a clause in the *Magna Charta* of King John, that they had been so represented, or those of them held in chief of the crown, equally with the baronies, lay and ecclesiastical; there seems no ground to imagine for the boroughs, any other than the same strictly territorial and proprietary representation by the tenants in chief; nor is it probable that any delegated representation of them had preceded their incorporation into bodies politic.—Vide *St. Amand, Hist. Essay*, p. xcvi.

* 28 Edw. I (1300), antè, p. clxxxviii.

† If the *citizens*, under the charters of HH. I & II, &c., were the "burghware within London, French and English," under that of Will. I, it seems probable to suppose the election of sheriff to have been, according to the interpretation of that term, in the "inhabitants by custom holding their lands or tenements of the king, or other lord of the borough, at a yearly rent certain"

(if indeed, in practice, the elections were not in fact made by the Magnates, in *the presence of*, rather than *by*, the general folkmote assembled*)—had devolved upon the same select representative body, under the communia of "Mayor, Aldermen and Commonalty," at or previously to the date when the appointment of the corresponding officer in the counties was devested from the elective power of the county to the king's nomination.†

3.—That the elective mayoralty, granted and confirmed to the *barons* of London, was in the appointment of the Aldermen or Magnates, "constituting, as they asserted, the *municipal communia*, and constantly exercising the power of government,"‡ under protest, as it might be said, of the "*lesser community*," who maintained that they were the

(*Old Ten.*)—who may, in the latter case, have been the general body of the free householders of the socs—the "citizens of the leets." But a theory which adapts itself to probability from known facts, arises in the comparison of the city to the circumstances of a county, where the election of sheriff in the *freeholders having at the period a voice in the county*, would necessarily have been in the *barons of socs.*—*Antè*, p. cxxvii.

* *Antè*, p. clxxxix.

† *Antè*, p. cxxvi.

‡ *Antè*, p. clxxxii.

true communia, to which of right the municipal authority ought to belong.* The contest terminating, as it seems, by a compromise, which is found in operation in the 26th Edw. I, when the Mayor was elected by the aldermen, and "twelve men from each Ward"; and in the 29th of the same king, "by the mayor, aldermen and sheriffs, *with the assent of twelve of the better sort of every Ward.*"† Nor is there any reason to believe that the elections of the intermediate years, said to have been made "by the Mayor, Aldermen, and the *whole commonalty,*"‡ differed in any manner from the arrangement immediately previous, and subsequently in operation; especially when the entry of the 6th Edw. II § is compared with the Exchequer record of the previous year,|| and the king's proclamation two years later, declaring the custom, is brought to bear upon the whole.¶

The act of summoning a discriminate number—"the more able and discreet men of the Wards," as the first concession of the Magnates to the lesser community, was an ar-

* Antè, p. clxxxii.

† Antè, p. clxxxviii.

‡ "Totem communitatem," 27 & 28 Edw. I—antè, p. clxxxvii.

§ Antè, p. xcxi.

|| Antè, p. clxxxix.

¶ Antè, p. cxclv.

rangement that must necessarily have placed great power in the hands of the Mayor ; and by the opportunity of partizanship which the principle admitted, must have completely neutralized any approach towards an independent or popular representative voice. Yet such appears to have been the practice, not by an undue assumption of power by the Mayor and Aldermen, but by the authority of the royal proclamation, declaring the antient custom : as in the 8th Edw. II it was so proclaimed, that the election of Mayor and Sheriffs should be made “ by the Aldermen, and *other the more discreet and powerful citizens, as in the same it had anciently been* accustomed to be done ;” * and that none, *unless he be specially summoned*, should intrude himself in making the election.” †

In the course of this deduction from the evidence of facts, and so early as they have been attainable from historical records, no instance has been discovered of any recognized exercise of those original and early common rights, assumed to have been inherent, or conceded by charter to the general body of the “ inhabitants ;” nor does it seem probable, as it has also been assumed

* Ant^h, p. cxcv.

† Ib., p. cxciv.

in connexion with the same theory (if mere residence in free-pledge constituted the only preparatory of citizenship), that the right of self-government, in any shape, should have appertained to a qualification, open to refugees of every country and denomination; the more especially when, at a later period, under an incomplete operation, perhaps, of the special freedom, the same objection is still found to have held against the general body, comprising the "many rubbish and wylde com'oners," who disputed the franchise with the aldermen, at a time when, according to Fabyan, "the city was inhabited w^t many maner of nacio's which were then admytted cytezens."* It will be difficult, therefore, to appreciate the franchise, of which, it has been assumed and asserted, the freemen of London had been divested by the encroachment and usurpation of commercial power in subsequent times. Nor, in the records which it remains to quote, can be well discerned (save in the reaction to the Ward representations, and, remarkably enough, in such a retrograde movement under the Commonwealth)—any other than that progressional extension of freedom in the existing institutions, which did and must

* *Ante*, p. cxxvi.

ever accompany the amelioration of an enterprising and prosperous people.

Opposed as are these to the opinions of the few who have at all (and, it may be added, very superficially) treated of the subject, it is not without satisfaction, it must be confessed, that a theory originally entertained upon the general principle, that the current of commercial prosperity, wealth, and its attendant education, could not have rolled for centuries onward, in a scarcely interrupted flow, while the spirit of freedom had ebbed in a retrograde course,—it is not without satisfaction that this theory, so honorable to our history, has been borne out by facts, which shew (if precedent must be followed in a term) the “usurpation” to have been of the popular and progressing shade.

In the 16th Edw. III, the electoral system still remained upon the plan which had been declared, by the proclamation of Edward II,* to be the established custom—viz. in “the aldermen, and the discreet and powerful citizens—specially summoned”:

1342, 16 Edw. III.—A vacancy having occurred in the Mayoralty, the sheriffs were required to summon all the aldermen, and *the honest, rich and discreet commoners of the city*, in the same city then living and being, that they

* Antè, p. cxiv.

might be at Guildhall, at a certain time, to elect of themselves a mayor.—*Lib. F*, 62.

The next record bearing upon the subject shews a variation from the method of the preceding,—in that, while the number from each Ward was settled at a graduated proportion of twelve, eight, or six, who were still to be specially summoned to elections, an arrangement seems to have been adopted with the view of counteracting the selection of the mayor and aldermen, by placing the election of such electors so to be specially summoned, *in the Wards*; and by making the deliberative body, or Common Council, necessarily in frequent contact with the “upper chamber,” a distinct body from the electors:—

In the 20th Edw. III (1346).—At a meeting of the Mayor and a considerable number of the commonalty, in-somuch that the Guildhall was filled,* an ordinance was

* Some stress has been laid upon this expression, as tending to infer a much larger assemblage than the representative commonalty might be supposed to create; in the distant hope of discovering the franchise exercised by the whole body of the freemen in their own proper persons; but in such case, the result must necessarily follow, that they were present parties to their own disfranchisement, by the ordinance then and there passed.

The whole amount of the precedent electoral body, including the aldermen, would certainly have assembled a body of citizens insufficient to fill the *present* Guildhall;

passed, that every Ward, according to its size, should choose a certain number, *twelve, eight, or six*, to come to the election of lord mayor and sheriffs; and that none but those specially summoned should attend.

And by the same ordinance it was provided, that *eight, six, or four* from each Ward, according to its size, should be chosen at the Wardmote, who were to be summoned as occasion required, to deliberate on the common interests of the city.—*Lib. F, ult., fo. 56.*

Notwithstanding this arrangement, and that the electoral body was to be chosen by the Wards, the aldermen appear to have retained the supervision of the matter of the appointment of the Council to be associated with them; for in the following year, the de-

but the erection of that foundation was not commenced until sixty-five years after the above date; and its predecessor, the Alderman-Bury, or Hustings of the Aldermen, which Stowe describes to have been "a little cottage," in comparison with the *new Gilda aula*, must have been much less capacious; and, built with reference to the government of the aldermen, was in all probability barely sufficient for the assembly of the enlarged Council of the Wards.

The same observations are also applicable to an entry of the year 1365 (39th Edw. III), when, at a meeting of an *immense commonalty*, assembled in the Great Hall, the Mayor was elected, and general ordinances were made (*Lib. Leg., G. 173, B. 39*): and both seem explained by an entry of the 28th Edw. III (1354), when a meeting was convened of the Mayor, Aldermen, Sheriffs, and an *immense commonalty of the wiser and richer men of the Wards*.—*Lib., G. 19.*

liberative Wardsmen were elected *in their presence* :

21 Edw. III (1347).—At a meeting of the Mayor, Aldermen, and an immense Commonalty, in the presence of the Mayor and Aldermen, certain Wardsmen were elected to come to Guildhall, when they should be warned, for the business of the city.—*Lib. F.*, 136.

It is not improbable that this arrangement, thus early made, had reference to the inefficiency of the leet character of the Wardmote, for any discriminative purpose of the special freedom; and that the evident incompatibility of an election to be made in an assembly, of which only a part of the summoned were entitled to the special franchise, notwithstanding the repeated endeavours to separate the interests, by proclamation and distinct enrolment,* did contribute greatly to the adoption of the trading classification which the incorporated crafts seemed to offer, in the unity of discrimination of which the Wardmote assemblies had proved wholly incapable. And in the exact proportion that “the more able men of the Wards,” who had theretofore constituted the special commonalty of the city, became associates of the incorporated crafts—in that ratio was the transition easy and the classification admirable for the object.

* Vide Index, art. *Wardmote*.

proposed. A few years, and a silent revolution had been accomplished—the gildated crafts, by the enrolment of the special free-men, householders of the Wards, each in his mystery, had obtained, with the emphatic denominative of “citizen,”* an exclusively civic importance, paramount to the mixed cha-

* This is remarkably illustrated by the funeral ceremonial appointed by the College of Arms to deceased citizens:

Proceedings of a Citizen's Funerall.

First, the Children of the Hospitall

Two Conductors

Poore Men in Gownes

Gentlemenes Servantes in Cloakes

Gentlemen in Cloakes

Gentlemen in Gownes

Aldermen in Blackes

The Preacher

The Penon

Helme and Crest

Coats of Armes

A Penon of
the Merchants

THE
BODY

A Penon of
the Company.

The Chief Mourner

Two Assistants

Aldermen not in Blackes

Gentlewomen in Blackes

The Liverie of the Company

Maisters of the Hospitall

Gentlemen not in Blackes

The Parish and others.

Nichols' Illustrations, p. 74.

racter of the inhabitants of the Wards as civic divisions; and the reconstruction of the city from a territorial to a trading classification had become complete. In the 25th Edw. III, the deliberative council of the city was chosen from the men of the Mysteries:

25 Edw. III (1351).—A precept was sent by the Mayor to certain Companies, requiring them to assemble their good people, and to cause four to be chosen, to consult with the aldermen and sheriffs on the business of the city. —*Lib. F*, 206.

Here was usurpation! here monopoly! cry the advocates of the territorial system. But if, according to one of these, "*every citizen was free of some Mystery*,"* as indeed, a few years later, and every free citizen was required to be, by parliamentary enactment†—it would still result, that *every citizen* represented by the commonalty selected from the Wards, must have been no less so by delegates from the Mysteries in which they were all associated. But the monopoly? Aye: let a retrospection of facts, as nearly as they may be approached, speak for the monopoly. The first notice of a commonalty associated

* "For the protection of trade, it was thought necessary, at this time, that every citizen should be free of some Mystery."—*Facts and Arguments*, &c., p. 13.

† *Antè*, p. cclxxi.

in the government of the city under the communia, appears to have been a Council of *thirty-five*.* In the 12th Edw. I, it consisted of *forty-four* members.† In the 20th Edw. III, the deliberative body was composed of eight, six or four, from each Ward, according to its size,‡ making a probable total, estimated from the assessment of 1339, of about *one hundred and twenty-eight* members. The Council of four from each Mystery, under the precept of 1347, if not purposed to compose a similar aggregate, would hardly have comprised a less number, and calculated upon the *thirty-three* Companies which, in 1355, contributed their free gifts to the king,§

* Antè, p. cxlix.

† Lib. Alb., fo. 116; antè, p. cli.

‡ Antè, p. cexciii.

§ In the 37th Edw. III (1355), John Cauntebrigg, chamberlain of London, made a return of the contributions of the Mysteries of London, as free gifts to the King, towards carrying on the French war. The contributing Companies were thirty-three in number, as follow, with the amount of their respective contributions, which may serve to determine their relative importance at that time, viz.

Pellipar' (Skinners), xl l.	Cissor' (Tailors), xx l.
Piscen' (Fishmongers), xl l.	Aurifabr' Goldsmiths), xx l.
M'ceris, xl l.	Braciato'es, xliij l. vjs. viij d.
Drap's, xl l.	Carnifices Sci Nichi, ix l.
Vinetar', xxxiiij l. vjs. viij d.	Carnific' destchepe, viij l.
Grossers, xxvj l. vjs. viij d.	Candelar', viij l.

would have constituted a total of *one hundred and forty-two* guaranteed citizens, returned by the election of others of the same quality—the good men of the mysteries; who, as qualified liverymen—"the ablest of the yeomanry or diffusive body,"* "persons of good condition"† —would have been so many classifications of "the more able and discreet citizens," the *probi homines* of the Wards.

This arrangement, which constituted every incorporated craft an electoral college of free citizens, deputing its representatives to the Common Councils of the city, seems for the time to have obviated the dictation of the Mayor, as well as the influence of the aldermen in the Wards; and, by avoiding the in-

Ironm.'s, vijl. xvij s. liij d.	Courreo's, v mcs.
Zonar' (Girdlers),	Pouchemakers, v mcs.
vj l. xij s. liij d.	Armurary's, lx s.
Poletar' (Poulters), x mcs.	Sporiers, xl s.
Brasiers, x mcs.	Tanners ex Newgate, xl s.
Allucar' (Leatherdressers),	Bowyers, xl s.
x mcs.	Waxchaundelers, xl s.
Carnific. de les Stokkes, vjl.	Tanners ext' Crepelgate,
Peutres, cs.	xxxj s.
Sellar' (Saddlers), cs.	Glov'es, xx s.
Grossers in Rop'ie, cs.	Duobz Capper, xij s. liij d.,
Cuttelar, liij l.	

* Antè, p. ccli.

† Accs. of the Grocers' Comp., p. 47.

termixture, it effectually guarded against the unauthorized interference of the general body — the *merely freemen* (*not householders*, and of the “*more able*” and “*discreet*” reputation); as also of the non-freemen, who, as “citizens of the leets,” under the system of delegation from the Wardmotes, still contrived to intrude themselves (notwithstanding the accustomed proclamations, with threatened penalties), and mingle their clamorous voices at the district elections. These, however, on whichever side the clamour may have been exercised, appear entirely to have degenerated from their institution; and their delegates, if generally or at all specially summoned, to have become the merely acquiescent auditory of the elections made by the Court of Aldermen; in whom, indeed, Fabyan, by his record of two elections about this time, seems to have considered the franchise to have existed, quite as a matter of course.*

It seems probable, also, that some depar-

* In this xliii yere, or more certeynly in ye ende of the precedyng yere, one Walter Bernes, Mercer, was, vpon the daye of the Translacyon of seynt Edwarde Kynge and Confessoure, or the xiii. daye of Octobre (1368), *chosen, by the mayre and aldermen*, mayre of the cytile of London; but howe it was for lacke of substaunce, or by other impedyment whiche is nat noted, the sayde Walter

ture from the last-mentioned ordinance had, in the course of time, gradually taken place in the election of the deliberative assembly—that the lesser Mysteries, perhaps, had not been proof against the influences which had operated in the Wards; for in 1375 (49 Edw. III), the matter having then been brought before a special meeting of a great number of the chief citizens, complaint was made that ordinances and agreements had been made by the several mayors and aldermen, without calling the generality of the Commons—only such as durst not oppose them, who had so enacted dispositions and ordinances to the common prejudice. Wherefore, the Mayor having summoned several of the Commons that were not aggrieved, out of the several Mysteries that then complained, it was agreed that three aldermen should go out of their office of alderman every year, and others be chosen in their room; and that the Companies should choose such; and be contented with the ordinances that should be so,

upon the daye of Symonde & Iude folowyng, whan he shulde haue taken his othe at Guylde halle, apperyd nat: wherfore in his ru'me *by election of the foresayd mayre and aldermen*, was admytted for that yere folowyng, Symonde Mordon' fysshmonger, mayre of that cytie.—*Fabyan, Chron.*, p. 479, ap. *Ellis*.

made; and that they only should be summoned to choose mayors, and at such other times to the Guildhall, when there should be occasion to summon and take counsel of the Commons. To this end, the great Mysteries were to choose not above *six*—the lesser, *four*, and the least, *two*,—whose names were to be returned to the Mayor; and they to remain in the office of Counsel for the ensuing year, in whose determination it was agreed that the Commons should abide; provided the Mayor and Aldermen ordained nothing touching them without the consent of the major part of the said Counsel—or at least of *twelve so chosen of the most sufficient mysteries*.*

* Lib. F, 206; H. 46. In the minimum of the Commons, which, in parliamentary phraseology, it was declared should constitute “a House,” is discovered, perhaps, the earliest reference to a predominance of *Twelve Companies*, although not precisely in the present order of arrangement or precedence. In the 50th Edward III (1376), the Mysteries returning members in pursuance of the above ordinance were as follow :

Grossers 6	Pell's (Skinners) 6
Mercers 6	Fab'm (Smiths) 6
Draper ^d 6	Breu's 5
Pesson's (Fishmongers) 6	Sellar's 4
Orfey's (Goldsmiths) . 6	Webbe's 4
Vynt's 6	Tapicers 4
Taillo's 6	Chaundel's 4

Since a Council had first been associated with the Magnates in the government of the city, no arrangement seems to have trenched so much against the power of the aldermen, as here was accomplished by the Commons united in their crafts: and although the number of the direct electors was not materially increased, an acknowledged right of participation for the Commons, in the enactment of civic ordinances touching themselves, seems to have been obtained, as well as the appointment of an electoral body, delegated by the discriminate citizens of the Mysteries, wholly

Fullor' 4	Capellar' 2
Zonar 4	Peuter's 2
Tinctores 4	Breuers (Ales) 2
Salt's 4	Hurr's 2
Masons 4	Horn's 2
Ir'mong's 4	Armurerz 2
Allucar' (Leatherdress- ers 4	Cuttella' 2
Boch's 4	Sporiers 2
Leathersell's 2	Plom's 2
Found's 2	Wax Chaundel's 2
Joigno's 2	Tonsores 2
Curreo's 2	Peynt'es 2
Freemasons 2	Tann's 2
Flech's 2	Pouchemakers 2
Bakers 2	Wodmong' 2
Burrillo' 2	Pynn's 2
Hab'rdaash' 2	
Brasiers 2	
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superseding the interference of the Wards, which had proved so incapable of the trust. Under this ordinance the associated crafts, now increased to *forty-eight*, returned an aggregate of *one hundred and fifty-nine* members for the electoral and conciliar commonalty of the city.

If this arrangement failed to produce harmony in the city councils, still less did it succeed in abolishing the confusion which had prevailed, or counteracting the predominance of particular interests at elections ;—at which the general body still persisted to “ battle for their rights ” by an infusion of physical power, more frequently on behalf of the demagogue of the day, than in support of good order or sound discretion. Neither was the elective mayoralty at all so indisputably in the city, but that the king yet, occasionally surpassing his right of approval and confirmation, exercised the express appointment : and in the year following the regulation last mentioned, the elected governor of the city was discharged from his office, and Nicholas Brembre “ chosen mayor by the king’s writ.” *

* H Edw. III. This yere in Marche, Nicholas Brembre was chosen Mayr by the kingis writt (*Arnold's Chron.*) Fabyan accounts for the discharge of the Mayor, for that he had not been quick enough in supplying the king with loans,

The introduction of Brembre to the mayoralty forms an era important in civic history. Appointed by King Edw. III, in the last year of his reign, with the object expressed by the chronicler, of raising loans for the public service, he must be considered, as a member of the most powerful of the city crafts, to have been rather an influential man amongst the wealthy, than the popular favourite of his fellow-citizens. As an active agent or principal, in the busy scenes which followed the accession of Richard II to the throne, his conduct shews him to have been the resolute and determined aspirant of power, regardless alike of the means employed, or the conse-

on account of a subsidy granted to him. "But or this money was leuyed, the kynge was fayne to borowe sumes of money in dyuers places, amonge the which the cytle of Lo'don was sent to for iiii M li.; but for ye mayre, than Adam Stapulle, was not quyk or fortherynge in that mater, he was by the kynges co'maundeme't discharged the xxi daye of the moneth of Marche, and for hym was than Richarde Whytyngton mercer chosyn" (*Chron.*, p. 487, ap. *Ellis*). The name of Whittington seems to have been an error of the chronicler, for he did not appear upon the scene, as sheriff, until seventeen years later.

Another instance occurred, ten years previously, of the interference of the king in the appointment of the Mayor:

In this xl. yere, at the kynges co'maundement, Adam Bury (Skynner), thanne mayre of London, was discharged the xxviii day of Iannuarii, and for hym electe and chosen mayre Iohn' Lousekyn grocer.—*Fabyan, Chron.*, p. 477, ap. *Ellis*.

quences which might ensue. One of the five aldermen knighted with Walworth, in 1381, for their activity in suppressing Tyler's insurrection, the idea of managing the multitude by treachery, and of sustaining authority by the sword, seems to have occurred to him as the practical model upon which he might and did acquire, and for the time retain, the civic rule. Like Richard, none could say "but that he had the crown,"—he was not "fool as well as villain."

It was not, however—nor could it have been, as represented, the preponderance of the twelve or "more sufficient" Mysteries that gave to him this overruling power, and sustained him in his wrong; for while "the folk of the Mercery, *as a membre of the same city*," are found to have been dissentients, and petitioners against the lawless power—the "strong hand" by which the mayoralty and other city offices had been taken, "and holden as it were by conquest or maisterye; they made no complaint against their brethren—citizens of the other crafts. It was not the combination of the minor companies, jealous of the proportionate power of their brethren of the "more able" gilds, or subdued by corrupt influence to advance the power of one man or one mystery—for many

of the latter, also, were complainants, and petitioners of the same violent coercion of the franchise which had, by ordinances of the city councils, been entrusted to them. It was by none such undue influence of legitimate means that the object had been accomplished ; but, on the contrary, it is to be observed that, so far from the intolerant power of Brembre having been established and supported by a combination of the delegates of the more powerful of the crafts, his ascendance was, in fact, instrumental to the suppression of their representative voice, and their direct influence as electors ; nor can reflection deduce any arguments from the facts of the case, to render it credible that a combination so unnatural should have existed—and for the purpose of an act so suicidal as that of placing power, to which many were entitled, for a series of years in one man, or men alone of one craft, to the oppression of the rest.* But the power which Brembre could hardly have hoped to command, in the

* In the first nine years of the reign of Richard II, the city was governed during six years by members of the Grocers' Company, viz. in 1377 by Nich. Brembre ; in 1378, by Sir John Philpot ; in 1379, by Sir John Hadley ; and in the years 1383, 1384, and 1385, again by Sir Nich. Brembre.

well-balanced electoral bodies of the gildated crafts, he found the means of securing to himself—first, in the aggrandizement of the craft to which he belonged, and then by the annihilation of the electoral voice of all the other incorporated bodies of the special freedom; and this revolution was commenced, not in the Mysteries, where the attempt would have been in vain, but in *the Wards*, where the “citizens of the leets,” in indivisible masses of freemen and non-freemen, administered the local franchises, and the former, where they could be distinguished (or oftentimes both), also returned the members of the upper chamber of the city council—the elective aldermen, representatives of their antient proprietary and territorial barons of socs.

By ordinance of the king in council (28 Edw. III), the aldermen, from an annual election, had been reinstated indefinitely during good behaviour; but in the 7th Rich. II (1383) a general vacation of the office took place, upon petition to the king (through the influence of Sir Nich. Brembre, as it is stated); and in the new elections, *sixteen* of those returned, including Brembre, are found to have been members of the Grocers’ Company.*

* First on the record, is the return of Brembre for Bread-street Ward :

A majority so commanding, in the court so lately found to have resumed the exercise of their antient contested privilege,* seems a circumstance more readily to account for the replacement of Brembre in the mayoralty, than that certain crafts of the citizens should have combined to that end. Nevertheless, in the same year that the election of Aldermen gave to the Grocers' Company the overwhelming majority in that court, the chronicler records the first usurped mayoralty of Brembre to have been accomplished as follows:—

vii Rich. II.—In this yere S^r Nichol. Brembre was chosene maire of London be stronge hand of certeyne craftes of London.—*Chron. Lond., Harl. MS. 565.*

If certain of the crafts can be believed so madly to have combined, it could hardly have been any considerable number, nor is the advantage of any seen in the result. Brembre, it is true, had conciliated the Fishmongers†

“ Bread Street—Dominus Brembre, miles, electus est in Alderman. Wardæ prædictæ per probos homines ejusdem Wardæ.” The other fifteen aldermen of the Grocers' Company were as follow: Sir John Haddelsey, John Warde, William Barrett, Adam Caryl, Adam Chaungeor, John Hoo, Hugh Falstolfe, Geoffrey Cremylford, William Badly, Sir William Standon, Richard Aylesbury, John Ferneux, William Evesham, Richard Preston, John Churchman.

* 43 Edw. III; antè, p. ccxcix. † Antè, p. ccxxxii, n.

by obtaining, in the same year, the restoration of their charter: but, as affecting other incorporated bodies, in the same year also, the franchise of returning the deliberative and electoral council was wrested from them, and replaced in the Wards, with the reduction, in the aggregate, of nearly half the number previously returned by the men of the Mysteries:

In the 7th Rich. II, at a meeting of the whole community (*immensa communitas*) specially convened, it was declared that certain articles should be amended, for that several orders had been obtained by clamour rather than reason; occasioned by sending insufficient people thither. Whereupon an ordinance was passed, that certain Wards should cause to be chosen four, to take their oath before the Mayor as formerly was used, and *that there be not above eight of any Mystery*. The number for all the Wards to be *eighty-six*, to be chosen of the more able and sufficient, fifteen days after St. Gregory.—*Lib. H*, 178.

By a singular coincidence with Brembre's majority in the Court of Aldermen, it was also declared, with reference to the election of sheriff—

That the Mayor, with the advice of *sixteen* Aldermen at least, shall summon the Common Council, and others, the most sufficient citizens, to choose one able person to be sheriff, on St. Matthew's day, and present him to the mayor and aldermen by the common serjeant.—*Id*.

The election of the mayor, on the feast of St. Edward, was also appointed to be conducted in the manner following:

That the citizens so assembled shall choose two of the most sufficient and wisest citizens, and when they shall be agreed, present them to the mayor and aldermen as anciently was accustomed to be done.—Ib.

If this ordinance had been passed with the object of preventing the recurrence of the “strong hand” exercised by the “certain craftes,” it is difficult to discover how it was so to operate ; but, viewed as a measure of policy, that should complete the absolute sway of one man in the selection of his “upberers,” whether of his own, or of whatever craft they might be, the arrangement seems admirably capable of such a monopolous influence ; for while the aggregate of the delegated body was reduced from *one hundred and fifty-nine* men of the Mysteries, to *eighty-six* for all the Wards, the number of each particular Mystery, by possibility to be so returned, was increased from two, four or six, to *eight* : and thus a result, which, by the balance of expectant power in the twelve chief Mysteries, could not have been obtained by the voice of a majority in each craft, had a double chance of being accomplished in the Wards, where the united interest of each particular craft had not only to compete with the power of the many, but also became secondary to the influence which might prevail within the

twenty-four districts, governed by so many aldermen, of whom a majority of *sixteen* were citizens of one craft. In respect to the crafts, also, the ordinance admitted of this result, that a majority in the council of 86 commoners, was within the compass of *six* crafts, having their full complement of possible members returned in the Wards; whereas, under the previous ordinance for election by the Mysteries, the combination of sixteen companies of the incorporated citizens, including all those returning the greatest number, would have been necessary to obtain the same result. It will not, therefore be difficult to discern which must have been the more popular measure.

Under this arrangement, the reinstatement of Brembre in the mayoralty for the following year, is still recorded to have been “be the said craftes”—though it seems mainly to have been accomplished by the open violence of retainers not at all entitled to be present—the “men of armes”—and “men of the contre at Harowe and thereabout;” according to the statement of the chronicler before cited :

viii Rich. II.—Also this yere S^r Nicholl Brembre was chosen Maire agene be the said craftes, and be *men of the contre at Harowe and the contre there aboute*, and not be the fre eleccion of the citee of London as it owith to be: and the *colds halle* was stuffed with men of armes overe even, be ordinaunce and assente of S^r Nicholl

Brembre, for to chese him maire on the morowe, and so he was.—*Chron. Lond., Harl. MS., 565.*

These violent proceedings, and the general oppression suffered by the citizens at the hands of their merciless ruler, were afterwards the subject of some very long petitions to Parliament, from which it may be interesting to abstract so much as comes within the range of the present purpose. And, first, the "folk of the Mercery" told their griefs, as follow :

To the moost noble and worthiest lordes, moost ryghtful and wysest counsellors to owre lige lord the kyng, complaynen if it lyke to yow, the folk of the Mercerye of London, as a *membre of the same citee*, of many wronges, subtils, and also open oppressions, ydo to hem by longe tyme here before passed, &c. Of which oon was, where the eleccion of Mairaltie is to be in the *Fre men of the citee*, by gode and paisable wyse of the wysest and trewest, at o day in the yere frelich, there noughtwithstondyng the same fredam or fraunchise, Nichol Brembre wyth his upperers, pr'posed hym the yere next after John Northampton Mair of the same citee, with stronge honde, as it is ful knowen, and thourgh debate and stronger partye ayeins the pees bifore purvey'de was chosen Mair, in destruction of many ryght.

For in the same yere, the foresaid Nichol' withouten nede, ayein the pees, made dyv'se enarmynges bi day and eke bi nyght, and destroyed the kynges trewe lyges, som with open slaughtre, some bi false emprisonement, and some fledde the citee for feere, as it is openlich knowen.

And so furthermore, to susteyne these wronges, and many othere, the next yere after, the same Nichol ayeins the foresaide fredam and trewe co'es did crye openlich,

that no man sholde come to chese her Maire, but such as were sompned, and tho that were sompned were of his ordynance and after hys avys. And in the nyght next after the folowyng he did carye grete quantitee of armure to the Guyldhalle, with which *as well straungers of the contrée as others of withenne, were armed* on the morowe, ayeins his owne proclamation, that was such that no man shulde be armed, and certein busschementz were laide, that when free men of the citee come to chese her maire, breken up armed, cryinge with loude voice *fle, fle, folowing hem, wherthrough the peple, for fere, fledde to houses and other hidynges, as in londe of werre a dradde to be ded in co'e.*

And thus yet hiderward hath the Mairaltee ben holden as it were of Conquest or Maistrye, and many othere offices als. &c.*

The Cordwainers also told their tale, in nearly similar terms :—

A tres excellent & t's gracious Seignour, &c. supplient t's humblement ses pov'ez liges les Cordewaners *de sa citee de Londres, come un des Membres de mesme la citee.* Et se pleignent dev's Mons' Nicholl Brembre, Chivaler, de ceo q' la ou del temps dount nulle Memoire ne court, & p' v'tue des div'ses chartres p' n're dit S'r le Roy & ses nobles p'genitours g'unteez & confermeez ad estee usee, q' la election du Maire de la dite citee deusse estre franchement fait chescun an le jour de Seint Edward le Roy, p' *bone & peisible advys de les plus sages & loialx de mesme la citee & nemye autrem't.**

The petition then proceeds, as in the former case, to complain of the unlawful and violent conduct of Brembre—

* Ex orig. in Turr. Lond. Rot. Parl., v. iii, p. 226.

a t's g'unt destruccion des plusours bones Lib'tees, Franchises & auciens Costumes de mesme la citee, &c.*

The example of the Mercers and the Cordwainers was also followed by petitions of complaint, to the same effect, from the *Founders*, the *Saddlers*, the *Painters*, the *Armourers*, the *Pinners*, the *Embroiderers*, the *Spurriers*, and the *Bladesmiths*, of the city of London.†

Previously, however, to this ultimate recourse of complaint, the violence by which the city elections had been carried was made the subject of representation to the municipal council; and, in the fourth and last mayoralty of Sir Nich. Brembre, an ordinance was passed, in which delicate allusion seems to have been made to the men of armes, and other retainers unauthorized to have been present, and of whom it appears very clearly that his majorities had been composed :

In the 8th Rich. II (1385), upon complaint made that

* Ex orig. in Turr. Lond. Rot. Parl., v. iii, p. 226.

† Rot. Parl., v. iii, p. 225. The year following to these complaints terminated Brembre's turbulent career; for, having "a special hand," with others, in the plot against the life of the Duke of Gloucester, the chronicle before cited simply records his fate :

xi Rich. II.—Nicholl. Brembre, knyghte, hanged at Tyburne.—*Chron. Lond., Harl. MS. 565.*

improper persons assembled at elections (as well *servants* as others), and coming to Guildhall made disturbance, the *mayor and aldermen* commanded that none should presume to approach or come to Guildhall on days of election, except the mayor, aldermen, and good people of all the wards of the city, chosen for the Common Council, and others of the same Wards which should be summoned by advice of the Mayor and Aldermen, upon pain of imprisonment, and forfeiture of all they had to the king, and to lose their freedom for ever.*—*Lib. H.*, 133.

* This record has been quoted by Mr. Newell (*Facts and Arguments*, &c., 1830), as evidence of the elective franchise by the freemen—who, albeit, were to suffer imprisonment and forfeiture of all they had to the king, beside disfranchisement for ever, if they dared to intrude themselves at any election, unless they were of the selected few specially summoned by the Mayor and Aldermen for that purpose. Further, the same person seems particularly to have “run a muck,” in assuming that the term *servants* had reference to the displaced *liverymen* of London. He at once charges the windmill, and laments the disgrace of the freemen whose cause he espoused, by observing that “the *livery servants* of noblemen and gentlemen were placed on a footing superior to himself, unless he submitted to the degradation of paying money to some livery company” (*lib. cit.*, p. 25); and with an admirable confusion of ideas, he amusingly informs us that, “by the law as it at present stands (an. 1830), all the *LIVERY servants* in the kingdom might be sent—(the distinguishing characters of the type are his own)—to influence the city elections” (*ib.*, p. 15). As locomotion is denied to few, the fact is incontrovertible that *they might be sent*; but unless otherwise qualified, it seems doubtful if any or all “the livery servants in the kingdom” could carry a city election. When such a miserable quibble upon a

This ordinance, merely as a declaration of the franchise, was repeated in the following year, to the effect that none should be present

word shall constitute an elector of London, then every man out of bondage shall be a freeman of the same—or, (to adopt a *simile* employed in the great contest of 1650) then, because the lord mayor wears a gold chain, by a parity of reason, every alderman with a chain round his neck is a lord mayor.

In proving his case, however, by a deduction that is not very clear to appreciate, Mr. Newell does render visible the fog into which he had fallen; and not only so, but admits that something beyond the *yellow plush* was required to constitute a liveryman of London; for, says he, “at the very time I was becoming a liveryman, a *nobleman's coachman* was *qualifying himself* in the same way.” — *Ib.*, p. 25.

The election having reverted to the Wards in the previous year (7 Rich. II), the parenthesis in the record (*servants and others*)—contemplating inclusively Brembre's armed retainers,—refers to non-freemen and hired servants [*servientes mercenar'* and *famulorum mercenar'*—*Lib. Alb. de tenend. Wardm.*, *antè*, p. lxxiv], who, without any special privileges, were nevertheless required, as inhabitants, to be sworn and admitted into the frankpledge of the Ward, and to partake of certain personal liabilities in respect thereof,—but who, nevertheless, were enrolled upon a roll separate and distinct from the freemen householders, as a particular manifestation of their incapacity for civic rights. Still further explanatory of the record, as referring particularly to the improper introduction of retainers not authorized to vote, an act of Common Council (15 Edw. IV), directing who shall be present at elections, ordered that no alderman do bring *more than one servant*.—*Lib. L.*, 113.

but those "specially summoned, of the most sufficient men of the city;" and the same principle seems to have been acted upon until the 7th Edw. IV, when the electoral body was considerably augmented, by the addition of the Master and Wardens of every Mystery, to the Council already specially summoned from the Wards.

It has been supposed, and Mr. Norton* seems to have adopted the statement, that the electoral commonalty had not been affected by the ordinance of the 7th Rich. II; but that, during a period from the 49th Edw. III to the 7th Edw. IV, the same had continued to be specially summoned by the Mayor, out of a body appointed for such purposes by the livery companies;—supposing the intervening ordinances of the 7th & 8th Rich. II to have affected only the deliberative council. The ordinances in question, however, seem fully expressive of a contrary operation; nor could the livery companies have been charged with usurpation at the latter date, if they had all along enjoyed the franchise representatively, as corporate bodies. In the contest of 1650, indeed, unaware, perhaps, of the intervening ordinances, the ad-

* Comm. on Lond., pp. 154, 168.

vocates of the freemen claimed for the Wards an uninterrupted usage of 194 years, from the 19th Edw. I to the 15th Edw. IV ; and, on the other side, Mr. Hayles (for the Livery Companies) contended that, from the 20th Edw. III, there had been no instance at all of elections by the Wards—while Mr. Serjeant Mainard, on the same side, more reasonably rested his case upon the “good legal title”—of 180 years’ possession, from the 7th Edw. IV. From the identity which has been shewn between the Wards and the Companies,—that as citizens, the distinction was merely one of classification ; and the difference only, that in the Wards the civic distinction was not preserved,—it is doubtless that the qualified liverymen of the Mysteries did consist of “the ablest men of the Wards,”* and as such, individually must have composed the special commonalty thereof. At elections, the men of each craft sum-

* Antè, p. cccxviii. In preservation of their ancient distinction, as of the “more able and sufficient citizens,” an ordinance of the *Mayor and Aldermen*, passed Mar. 27, 1696, provided, “that henceforth no person free of any of the Twelve Companies be called upon to take upon him the clothing or livery, unless he has an estate of 1000*l.* ; and that no person shall be called to take upon him the livery of any of the inferior Companies, unless he has an estate of 500*l.*”—*Rec. Ironm. Comp.*

moned from the Wards, would naturally have combined where their interest or inclination induced to the support of a particular candidate, an instance of which is recorded to have taken place in the 19th Hen. VI (1440), when the "taylours" became turbulent.* But collectively, as representative bodies, the crafts do not appear to have been again called into operation, until the ordinance of 7th Edw. IV, abolishing, in a great measure, the discriminative power of the Mayor and Aldermen, in the selection of the electors by special summons, confided the appointment to the crafts, in the persons of their Master and Wardens. Previously, indeed, in the 22nd Hen. VI (1443), a declaration of the franchise is obtained in a royal proclamation of that year (induced, perhaps, by the Taylors' commotion), and in terms as nearly as may be to that of Edw. II, before cited,† setting forth—

That his progenitors, Kings of England, had, by their charters, granted to his citizens of London the liberty to choose a mayor and sheriffs among themselves, &c. And that *although, according to former times, they were wont to be chosen by the aldermen and more discreet persons of*

* xix Hen. VI.—This yere was put to deth Maister Roger Bolingbrok; and a stryf in the Yeld Halle for chesing of the Mayr by taylours.—*Chron. Lond., Harl. MS.* 585.

† Antè, p. cxciv.

the said city, specially summoned and warned for that purpose. Yet some that had not nor ought to have any interest in such elections came, and with their noise and clamour disturbed them. He therefore commanded the Mayor and Sheriffs to make proclamation, and prohibit all from coming that had no right to be there; and that the election should be made by the aldermen and other more discreet and able citizens of the said city, specially summoned for that purpose according to custom; letting them know that if any one should be chosen any other way, and be presented to him, or the treasurer or barons of the Exchequer, that he should not be admitted: and also directing them to arrest and commit to prison, all such as they should find doing contrary to the said proclamation and inhibition.—Claus. Rot., 22 Hen. VI.

With this declaration, from authority, of the individual rights of the freemen of London, we come to the ordinance by which it has, by a strange obliquity of judgment, been discovered, that “the first infringement by the livery companies on the rights of the citizens, was made” :—

7 Edw. IV, 1467.—At a meeting in Common Council, *it was agreed by the Mayor and Aldermen that the election of Mayor and Sheriffs be only by the Common Council, the Master and Wardens of every Mystery of the city, coming in their liveries, and other good men specially summoned.—Lib. L, 53.*

In this record, Mr. Schultes not only discovered the “disfranchisement of the Wards,” but, assuming the fallacious position of the usurped rights of the freemen, he fancied he

had convicted the mayor and aldermen in the very act of the illegal deprivation—that it was “the sole act of the *mayor* and *aldermen*, independent of the *commonalty*.”

“At this Common Council,” says he, “two distinct transactions only are recorded to have taken place; one being an ordinance relating to the admission of officers into the freedom of the city *ex officio*, which was agreed to by the *mayor*, *aldermen* and *commonalty*; commencing thus:—

‘Item in eodem communi concilio concordatum fuit, per dictos *majorem*, *aldermannos*, et *communitatem*,’ &c.

and the other being the ordinance above stated [the assumed disfranchising act], commencing as follows:

‘Item in eodem communi concilio concordatum fuit, per dictos *majorem*, et *aldermannos*, quod de cetero electio majoris et vicecomitum tantummodo fiat per commune consilium, *magistros* et *gardianos*,’ &c.

by which it is evident that the disfranchisement of the Wards was the sole act of the *mayor* and *aldermen*, independent of the *commonalty*.” *

Taking the fact as incontestible, that it was their sole act, here does, indeed, seem a grave charge against the mayor and aldermen—if

* Enquiry into the Elective Franchises of the Citizens of London, p. 43.

the circumstance be viewed so superficially, as it were to be admitted as a fact recognized at the time, that the commonalty had vested in them the right of interference; but, present upon the same occasion, as appears by the other recited ordinance, then and there passed, with the concurrence of both bodies, the contrast, so remarkable, seems the best evidence of the rule then in practice, of the distinct powers of the two branches of the assembly, neither usurped by the one, nor corruptly conceded by the other,—but a rule established by custom and precedent—and involving a principle that may be found, and has in these pages been noticed, as fundamental with the original power of the magnates, and the gradual concession to a commonalty, associated with them in the government of the city.

The right of the commonalty to a voice in all matters of council “touching the Commons,” had been recognized by ordinance of the 49th Edw. III; * and the particular subject of the ordinance in question, “the admission of officers into the freedom of the city, *ex officio*,” seems to have been provided for by the first charter of Edward II, which, having particular reference to the exposition of the

* Antè, p. cccai.

principles of the special freedom, recognized also in the Commonalty—a voice in the admission to a trading equality with themselves, of all persons not entitled by due course of servitude to be so admitted.* Thus the mayor, aldermen and commonalty, seem to have been united, in an object legitimately within their joint control, by special compact. But as to the constituency of the commonalty themselves—either as a discriminately constructed electoral assembly, or a deliberative council, representative of the general body, and associated in the legislative government of the city, under the communia of mayor, aldermen and commonalty—all the early evidence is either directly of the fact, or implicative of the probability, that until the 20th Edw. III, their appointment had been the sole nomination of the mayor and aldermen,—selecting, by their special summons, the “chief men of the city” to be associated with them for all purposes, electoral or consultative. And this original discriminative power so exercised, and declared by royal proclamation to have

* Sect. 7, antè, p. cclx. The same principle was also the subject of the following Bye-laws:

9 Hen. IV.—The mayor to have two tuns of wine yearly, for ceasing to make six freemen by redemption.

1 Hen. VII, 9th April.—None to be admitted to the freedom of the city, gratis, but by consent of the commonalty.—*L.* 215. *Leg.* 112.

been the ancient custom,* practically negatives, as an illusive theory, the otherwise just principle upon which Mr. Schultes erected his discovery of the usurpation of the representatives of the ancient Magnates: that "the circumstance of summoning a part to exercise the elective franchise, or make ordinances, implied a general right existing in the whole body of the citizens." †

At the most, the entire previous practice upon record shews it to have been less a latent right, than a principle "impliedly" only to have existed by representation of a selected body chosen *from*, but not *by*, the assumed constituents; and never so fully recognized, conceded or exercised, as when, by the ordinance under discussion, *the aldermen resigned a portion of their discretionary power to the citizens, in the persons of the Master and Wardens of their respective crafts*, whose position as such, guaranteed, in the terms of the precedents, their "sufficiency," as of "the more discreet and powerful citizens"; and who, "coming in their liveries," were so identified—the only requirement corresponding to the discriminating "special summons" by which the "other good men" were to be assembled.

* Antè, pp. cxclv, cccxix.

† Enquiry into the Elective Franchise, p. 30.

If this act were usurpation, then every liberal concession to increasing intelligence—every extension of the franchise to a constituency, ameliorated to a point that can appreciate its value and fulfil its obligations—may bear the same imputation. As an extension of the franchise to a constituency certainly representing, by direct delegation, the commercial bodies, independently of any special selection by the aldermen, the advance towards popularity must have been immense, not only in quality and independent character, but numerically, the return of five or four, as the case may have been,* from each mystery, must greatly have extended the number of the electors from the Wards, in addition to those

* As the crafts were not all governed alike, the number from each, under the terms of the ordinance, would consequently have varied to the extent of such diversification. The ordinary rule of government seems to have been in a Master and four Wardens; but some have three, others two Wardens only—and the Goldsmiths and Fishmongers, who acknowledge the Sovereign for Master, are ruled, the former by four, and the latter by six Wardens, one of whom is called “the Prime Warden,” with the character of Master. The incorporated Mysteries, thirty-three of which are mentioned in 1355, had, during the following century, and at the date of the ordinance, increased to upwards of fifty, so that the aggregate muster of their Master and Wardens alone, formed of themselves no inconsiderable assembly.

mentioned still to be "specially" summoned, —so far was the arrangement by this ordinance from the character which has been given to it. The Liveries, too, so thoughtlessly branded with unpopularity, are seen to have been the popular guarantee for the qualified elector, substituted, with an extended franchise, for the discriminating selection by the Aldermen, which had been so frequently a cause of complaint. And so well did the livery of the Mysteries answer the double purpose of civic identity, in respect of the special freedom, and of an electoral guarantee, as discriminating "the more able and discreet" citizens,—that after the experiment of seven years, the special selection by the Aldermen from the Wards, is found to have been wholly abandoned in favour of the discriminating liveries; and not only so, but the franchise still further extended to the whole of the members of the gildated crafts so distinguished. And this arrangement, which, excepting the practice under the Commonwealth, and the partial restriction by the Act of Will. IV, has since operated as the rule of civic elections, was carried into effect by an ordinance of Common Council, in the year 1475:

15 Edw. IV.—Ordered, that the Master and Wardens of the Mysteries of this city, meeting in their halls or other fit places, and associating with the good men of the

Company, clothed in their last livery, shall come together to the Guildhall of this city, to the choice of Mayor; and in the last but one to the choice of sheriffs: and that no others but the good men of the Common Council of the city shall be present at the said elections. And that no alderman do bring above one servant.—*Lib. L*, 113.

Provision was also further made against a monopoly of the mayoralty by any certain craft:

15 Edw. IV, Sept. 13.—Ordered, that two aldermen of the same Company be not named together for the choice of mayor.—*Lib. L*, 113. *Leg.* 102.

And thus was the disfranchisement of the Wards completed! By this ordinance, which multiplied the direct electors, at the least computation, tenfold,* were the “citizens deprived of their rights.” “By the encroachment so made on the rights of the citizens,” says Mr. Schultes, still pursuing his illusive theory, “their general assemblies were converted into special meetings of the liverymen alone, which had neither the character nor attributes of the ancient folcmote, and were not warranted by statute, charter, nor cus-

* In 1537, by a document before cited (*ant2*, p. cclli), which seems an imperfect return, as many Companies known to have been in existence are omitted, the “Freemen Householdors” of thirty-six Mysteries are stated at 2,456; in 1724, the liverymen of sixty-one Companies, computed by order of the House of Commons, were 8,514; and, in the following century, the liverymen of seventy-six Companies numbered upwards of 15,000.

tom."* And he who, in the previous ordinance, had discovered the usurpation to have been "the sole act of the mayor and aldermen, independent of the commonalty," was now brought to confess, in the Act completing the extended franchise, that it was the Commonalty who had voted away the "rights of the citizens,"—it was a commonalty, not the nominees of the Mysteries, but a commonalty, then, as still, chosen from, if not actually by, the Wards, under the ordinance of Rich. II;—who, supposing them to have been merely special freemen, and direct electors *ex officio* only, as members of the consultative assembly, had transferred their own direct rights—in fact, had virtually "disfranchised" themselves. "Contemplating the liverymen as a body of electors, it is observable," says the same author, "that they were not constituted by charter, and, in fact, were unknown *by that name* till the reign of Edward IV, when they were first brought into notice *under that description*, by an ordinance of the Court of Common Council."†

If such blunders have passed current with all the modern writers of civic history, and expounders of civic rights, the true position of the liverymen of the incorporated crafts,

* Enquiry into the Elective Franchises, p. 45.

† Ibid., p. 54.

as electors, from the same cause has not been the less misunderstood. Honest old Stowe, the father of civic history, whose unobtrusive labours have been so slightly treated by the moderns,* affords just evidence of the true position of the livery companies in his time, when he says—"as the Government of the city is in a mayor, sheriffs and aldermen : so a necessary part consisteth in the *Companies of the Freemen*." †

The Companies of the Frèemen embraced the entire body of the special freedom—for all such were required to be of some mystery; ‡ and the liverymen, denominated *par excellence*, the citizens, by their administration of the civic franchises, were certain of the better sort—"the ablest of the yeomanry, or diffusive body" §—elected to that distinction in each Mystery; and this guarantee, taken as a sufficient substitute for the discriminating selection by the Mayor and Aldermen, placed,

* Mr. Norton says, of all the writers on civic affairs in general, the most learned in London antiquities was "a tailor" (*Com., Pref. vi*); but still he seems to award the laurels to his commentator, Strype. And Mr. Herbert, in his "History of the Twelve Companies," which he modestly lauds as a "standard work—compiled with care and ability," mentions the labours of Stowe with considerable disparagement.

† Survey of Lond., v. II, p. 173, ap. Strype.

‡ Antè, p. cclxxi.

§ Antè, p. ccli.

in fact, the power which had previously been exercised by them, in the citizens themselves, or the electoral body of their several incorporated crafts. No usurpation of the "rights of the Freemen" did take nor could have taken place; for there is not only no evidence to shew that, under the incorporation of mayor, aldermen and commonalty, the special freemen ever exercised a general and direct voice; but, on the contrary, the evidence conclusively establishes the position, that the Commonalty under the Communia was a selected number, representative, it may be said, of the general body, not delegated *by* them; and in the terms of the royal proclamation, "the more discreet and powerful citizens," specially selected and summoned. It was the nominal disfranchisement of this selected body (not the general rights of the freemen), and the entire supercession of the nomination by the mayor and aldermen, which, experimentalized by ordinance of the 7th Edw. IV, was finally carried into full and extended effect by that of the 15th of the same reign. The position of the liverymen of the incorporated Mysteries, then, to its most extended limit, never contemplated a *general franchise*; but was still suppositious only of the character of the selected "discreet and able citizens," whose franchise they superseded, as representative

of the general body. And here arises the apparent anomaly of the result, and the dissatisfaction of the inhabitants, members of the civic freedom—merely freemen of the incorporated crafts; for in adopting the liveries of the Mysteries as the qualification of the elector, the limitation or extension of the electoral body was placed out of the control of the aldermen, into that of the governing and electoral council of the respective crafts—in whose hands the qualified electoral citizens, or freemen of the livery, gradually multiplied with the increasing prosperity of the commercial metropolis, and the individual wealth of the special freemen, so qualified for the clothing of their incorporated Mystery; and in the place of a limited and representative electoral council, acquired so much of a general character, as gradually to have comprised the majority, far outnumbering the merely freemen, or originally represented constituency of the crafts; and hence that distinction, which, in its adoption under the ordinance of the 7th Edw. IV, had a select representative character,—in its enlarged and extending approach towards generality, suffered the odium of a majority in power; and in still preserving the original qualification, in so far as comprising the more wealthy freemen

of the crafts, seemed to draw a property distinction invidious and perhaps unjust, though correct in a legitimate deduction from the principle of the original compact.

One of the most valid objections to the adoption of the liveries as the electoral test, seems based in the common weakness of humanity—and what body has proved itself equal to the trust of power? It will not, however, be contended, that the trust of the many incorporated crafts of citizens could be so objectionably employed, as the *selective* nomination of the executive government by experience had proved; though it certainly was at all times within the compass of the governing council of the Mysteries, by extending the number of their liveried freemen, or refusing the “clothing” to their diffusive members, to extend or limit, in the same degree, the number of the electoral citizens.* And as the election to the Livery of the crafts was, in common with the city freedom, wholly

* A remarkable *exposé* of the exercise of this power, in the Fishmongers’ Company, took place during the enquiry of the Commissioners for investigating the Public Charities of the Kingdom:

“Alderman Wood, Prime Warden, said:—Until the year 1800, the promotion to the Livery was limited to eight in a year; but in that year the livery was thrown open, and *four hundred liverymen were elected, on their*

a personal distinction, it is not to be denied that the Liverymen of the Mysteries departed from their original qualification for electors, as of "the more able men of the Wards," when they retained only the personal distinctions, and were no longer, as householders in trade, subject to the scot and lot of the Wards, and contributory to the charges within the same towards maintaining the state of the city.

On the other hand, in adopting the liveries of the existing incorporations as the electoral test, the Court of Aldermen,—without, perhaps, contemplating the vast multiplication of the qualification which ensued, had so far preserved their original supremacy and right of nomination, as to retain in the power of their own court, the grant of the civic electoral livery to all future incorporations; and although most of the incorporated crafts have, at the present day, been so invested, yet the Court of Aldermen did, for a long series of years, exercise their restraining power, as the only means left in their hands of controlling the

consenting to sign a declaration, foregoing all right to be invited to dine at the hall, because the hall was not large enough to entertain so many.

"Mr. Blackburn said,—That *this batch of liverymen was made to return Mr. Alderman Crowder, who was then lord mayor, to parliament for the city.*—*Hist. Twelve Comp., v. ii, p. 41.*

elective franchise*—no matter here with what object, political or otherwise, *but in proof of the original powers of exclusive civic rule vested in them, by descent from the ancient Magnates, barons of the city socs, and Aldermen by tenure, in evidence of their original and negative power under the communia of Mayor, Aldermen and Commonalty; and, consequently, in practical refutation of that common right assumed to have been exercised, during all such time, by the general body of the governed.*

With so extended a constituency of direct electors as the Liveries afforded, and the diminution in result by their abolition, it must be attributed more to the ruling spirit for change, and the consolidation of newly-established power, than a desire of reverting to those popular and supposed original principles, so incorrectly premised, that led to the abolition of the electoral livery, by determination of the Common Council, as the result of the Argument of 1650, before mentioned. As the first principle of a Commonwealth, the

* The Company of Clockmakers were incorporated in the 8th Charles I (1632). In 1748, July 11, they were heard before the Court of Aldermen, upon their petition to be admitted to the Livery, when the motion was lost by a majority of six. There were present twenty aldermen, of whom the *Yeas* had six—the *Nays* twelve; and two did not vote.

question of the franchise was then brought by petition before that Court, and the direct electoral rights of the diffusive body formally propounded, in the question—

Whether the right of electing city officers vested in the Lord Mayor, Aldermen, and the Freemen in general; or in the Mayor, Aldermen, Common Council, Master, Wardens, and Liveries of the several Companies!*

The result is found in an Act of the Court, “concerning elections,” passed the 4th Nov. following, declaring that—

Whereas by the ancient Charters granted and confirmed to this city, the election of the Mayor, Sheriffs, and other officers of the said city, ought to be by the *citizens or commonalty* thereof, whereby it is evident that the *whole commonalty*,† either personally (if without confusion it might be done) or their representatives, chosen by them

* London Liberties, or a learned Argument of Law and Reason, before the Court of Common Council, between Barristers and Citizens, upon Saturday, Dec. 14, 1650. 4to, 1651.

† The employment of the terms *Community* and *Commonalty*, by usage, in a sense both general and particular, has been a source of contention and much blunder in civic history. The advocates of the extended franchise naturally take the terms in the most enlarged sense of modern times; while Dr. Brady and Mr. Madox take them as they are found in the records, and in the sense in which they were employed, and that they were intended to convey. “The ordinary people and freeholders,” says the former, “or all but Knights and Gentlemen under the degree of Barons, have of late years been called *Communitas Regni*, or *Tota terre Communitas*; but anciently, the Barons

for that purpose, were to have votes in all such elections. But of later times, the Masters, Wardens and Liveries, of the several Companies of this city, have used and taken upon them (with the exclusion of all other citizens) to make the said elections, which practice of theirs seems to

and Tenants in Capite were the *community* of the kingdom; and those only were reputed such in our most ancient Histories and Records" (*Glossary to Hist. Engl.*) Of the earliest records of the civic incorporation, the same author observes, that the term employed is more commonly *communia* than *communitas* (*Treat. on Cit. & Bor.*), which had a more positively restricted sense; and Mr. Madox cites several instances of amercement for establishing a "Communia" without license (*Hist. Exch.*), which shews a limited and special import. The men of London were granted to have their "Communia" or incorporation (*antè*, p. cxli), an immunity which conveyed the right of self-government (1 *Salk.* 109), composed of the Magnates and a consultative *commonalty*; and both, as comprising the representative faculty of the institution, seem properly described as the *community* of the same.

The Commonalty of the records referred to in the above ordinance, as also of those previously cited, from the 20th Edw. I to the 39th Edw. III (*antè*, pp. clxxxviii, ccxcili), in which the terms "totem communitatem" and "immensa communitas" are found employed to represent the *Commonalty* assembled, seems to have comprised only a certain number of the "better sort of every Ward" (*antè*, p. cclxxxviii), and have a decided exposition in the ordinance of the 28th Edw. III (1354), when a meeting of the Mayor, Aldermen, and "an immense commonalty of the wiser and richer men of the Wards"—agreed that such aldermen and citizens who did not attend should be fined a certain sum, to be levied for the use of the city (*Lib. G.* 19). It may very fairly be asked, how this ordinance will agree with the premise of the text? and if the citizens to

be grounded upon an act of the Common Council, made the 23rd September, in the 7th Edw. IV,* before which time the same Elections had been made by a certain number of persons, chosen out of every Ward for that purpose, as appeareth by an Act or Order of the *Common Hall*,

be fined for not attending summons, had reference to the *whole commonalty*, in the extended generality above imputed to the term, viz. the *Inhabitants*,—where such a “Common Hall” could have been assembled—and how a penal summons to *all* could have been enforced?

Mr. Schultes has quoted an extract of *Hargreaves*’ from the Book of Customs—“quod major, et vicecomites civitatis prædictæ, per *cives* ejusdem civitatis, juxta tenorem cartarum progenitorum nostrorum quondam regum Angliæ, eis inde confectarum, eligantur, *et non alio modo*” (*Lib. Custum. temp. Edw. II*, 142 *Harg.* 21); and he triumphantly asks, if Dr. Brady would contend that the word *Cives* should be translated Commonalty, signifying Common Council, to bear out his limited interpretation? (*Enquiry*, &c., p. 42). The proper reply, and that which doubtlessly guided Dr. Brady’s deduction, seems to be founded, not upon a general translation of the words, but in their particular application: firstly, in the *practice under the charters*; and, secondly, in the question—who were the electoral “*cives*” at that time? Upon these points there can be no doubt. *Vide antè*, p. cxlii *et seq.*

* *Antè*, p. cccxx.

† *Antè*, p. cxcli. The term “Common Hall” seems here to have been employed unauthorizedly by any precedent, to impress the immensity of a modern assembly of the Livery. The “considerable number of the Commonalty,” which it is said then filled the “oolde halle,” that Brembre afterwards “stuffed” with his men of arms, must have a qualified reference to the “discreet and powerful citizens” selected from the Wards, who had previously constituted the “whole commonalty.”—*Antè*, p. cclxxxviii.

made the 20th year of King Edward III,[†] whereby, to avoid inconveniences which happened before that time in general assemblies of the citizens, that method of election by representatives was appointed.*

Now forasmuch as divers Companies of the Citizens of this city have no Liveries at all,[†] and so have no manner of vote in the Elections by Liveries, and for that, by the constitution of most of the other Companies, *the Liveries thereof are not chosen by the whole brotherhood, but by a few ; as, namely the Wardens and Assistants only,*[‡] and

* This statement does not represent the fact ; for the ordinance for the election of Mayor, in the 16th Edw. III, shews the electoral commonalty then to have been a select number, viz. "the honest, rich and discreet commoners," specially summoned ; and all precedent shews that system to have been the utmost limit of the ancient custom, of which the ordinance of the 20th Edw. III was progressive of popularity.

† Vide antè, p. cccxxiii.

‡ Vide antè, p. clxxix. "Each Company or Mystery," says Dr. Chamberlayne, "hath a Master annually chosen from among themselves, and hath other subordinate governors called Wardens or Assistants. These do exactly correspond to the general government of the city" (*Ang. Notitia*, p. 209, ed. 1687). It was this exact similitude which rendered easy, in the first instance, the extension of the franchise from the nomination of the one incorporation to that of the many ; and likening the "whole brotherhood" of the crafts to the "whole commonalty" of the city, in its most extendedly assumed interpretation, wherein consisted the difference of their relative position ? Neither had any recognized direct elective franchise—*nor have either, to the present day*. In the crafts, the Master, Wardens and Assistants, elected the members of the Livery from their freemen—from the Livery they also elected their own body, and from their own body they elected

thereby the greatest part of the citizens, members of those Companies, are also excluded from having any vote, either in person or representation, in the elections before mentioned—and so that great privilege of choosing their Mayor, Sheriffs, and other officers, is wholly taken away from them, to their great grief, occasioning thereby their often complaints: For remedy whereof, and to the intent

their Master. In the city incorporation, the Mayor and Aldermen elected the Mayor from among themselves, and from the general body of freemen they also elected the conciliar and electoral commonalty; and it appears from the author just quoted, the practice had also prevailed of electing themselves. Writing, during the suspension of the city charter, in the past tense, he says—"The twenty-six aldermen did preside over the twenty-six Wards of the city. When any of these died, *the Lord Mayor and Aldermen did chuse another out of the most substantial men of the city*; if any so chosen refused to hold, he was usually fined 500*l*" (*Ang. Not.*, p. 237, ed. 1687). The practice, indeed, does seem to have prevailed; for by ordinance of the 21st Rich. II, and 3rd Hen. IV, the election of Aldermen was then recognized as in their own court—and by the latter, out of four of the "most honest and sufficient citizens," to be *nominated* by the men of the Ward. By a civic ordinance passed in the 10th Anne (1711), entitled an Act to regulate the election of Aldermen, the number to be so nominated was reduced to two only (one being an alderman, who might remove), to be returned to the Court of Lord Mayor and Aldermen by the Householdors of the Ward, being Freemen of the city, paying scot and bearing lot; and by an ordinance passed the 15th April, 1714, the nomination was reduced to the positive election of one able and sufficient citizen and freeman, not being an alderman.—*Bohun, Priv. Londini*, pp. 60-61. *Vide post*, p. cccxlviii, n.

the ancient charters of this city touching elections may be pursued and kept inviolable :

Be it enacted and ordained, That from henceforth the Election of the Mayor and Sheriffs, Burgesses for Parliament, and all officers of and belonging to this city, formerly used to be chosen in a Common hall, shall be made in the Common hall of this city, at such times as hath been formerly used in that behalf, and by such persons and in such manner as is hereunder mentioned, that is to say :

That the Aldermen and Common Councilmen of every Ward of this city, and the like number of other honest men of each Ward, to be chosen yearly for that purpose, in the Wardmote to be held by the Inhabitants of the same Ward, shall be representatives of all the inhabitants of each Ward, as touching every such election, and shall for ever hereafter be the only electors of and in every such election in the Common hall, and shall be from time to time returned by the Wardmote Inquests of every Ward respectively, in their presentations, as Representatives and Electors for and on behalf of the Inhabitants of the same Ward, and shall be duly summoned to the Common hall when any election is to be made there, by the Lord Mayor of this city, for the time being, or his officer thereunto appointed ; and that every election of any of the persons aforesaid, which shall be made by the said Aldermen, Common Councilmen, and other persons to be chosen in every Ward for that purpose, or by the major part of them, assembled in the said Common hall, shall be good and effectual to all intents and purposes, as if the same had been by all the citizens of this city in their own persons ; and that no person or persons, save only the electors hereby appointed, shall be at any time hereafter admitted unto, or have any vote in, any of the Elections aforesaid.—No. 41, fo. 65 b.

If this ordinance had not been enacted ra-

ther in the "fear of popularity," than in furtherance of the professions of the constitution then in vogue,* the object of extended popularity, consistent with the special trading freedom, would probably have been best accomplished, either by granting the electoral livery to the whole of the incorporated crafts, or extending the franchise still further to the whole body of their members of the civic freedom, or even confining it to a representation thereof; whereas it is estimated that the result of the ordinance, professedly enacted "to the intent that the ancient charters of this city, touching elections, may be preserved and kept inviolable"—proposed to effect that result, and did practically restore the numerical exclusiveness, by reducing the direct electoral commonalty at least *nine-tenths* of the number of special citizens previously so qualified by the livery of the Mysteries;† and not only so, but, acting

* "I humbly refer to the Honourable Court," said Major Wildman, in advocating the cause which led to the present ordinance, "though it is strange to me to hear *the fear of popularity*, or of giving way so much to the liberty of the people, is so much insisted on, *now that we are come into the way of a Commonwealth*; it is a little dissonant to the *present constitution*."—*London Liberties*, p. 35; 1651.

† The actual electoral commonalty, under this ordinance, consisted of 486 members, including the Common

upon the definition afterwards as literally adopted by Mr. Schultes, that the inhabitant of a city must consequently be a citizen,* and casting the appointment of the diminished representative commonalty into the hands of "all the *inhabitants* of the Wards," without any special qualification, the citizens of the trading freedom were no longer the exclusive constituency;† and the non-freemen and other inhabitants, of every denomination, obtained a voice, which, from a sufferance under this

Council and the twenty-six Aldermen; whilst, estimating the number of the Livery of the Mysteries from the ratio of progression, as by the sworn returns at the corresponding periods of 1701 and 1724, when they were respectively 7,534 and 8,514, as four thousand in a century (the progression of the succeeding century, however, under the operation of the 11th Geo. I, nearly doubled that amount);—the qualified electors supplanted by the above ordinance were not less than 5,000.

* *Antè*, p. lxxii.

† In 1590, the number of the resident non-freemen within the Wards, by certificate, was 5,250 (*antè*, p. cclxxix). As the refuge of the metropolis greatly increased the population of London under the Commonwealth, when the special freedom had ceased to be respected, the increase was consequently of the unqualified description; and Mr. Norton states the increase to have been from 73,000 in 1631, to 103,000 in 1664, within the walls (*Comm. on Lond., App.*); so that the non-freemen, at the latter date, must have formed a very important proportion of the "*inhabitants of the Wards*," to whom the constituency of the electoral and consultative Commonalty was conceded.

ordinance, acquired so much the semblance of a vested right in them, that it ultimately became a subject of public discussion—not, indeed, whether the whole body of special freemen had a direct electoral franchise, but whether non-freemen had not a right to vote in their Wards, by virtue of their inhabitancy alone*—a principle that at once reverted to the simple qualification of the frankpledge of the leets, but was wholly inconsistent with the special conditions of the trading city. And hence is to be attributed, in a great measure, the origin of those “heats and jealousies” which continually agitated the city, upon all occasions of exercising its elective privileges, for half a century after the Restoration—and, indeed, until the matters in dispute were finally adjudged, if not set at rest, by parliamentary legislation in the reign of Geo. I.

The republican spirit which thus succeeded in overturning the extended franchise of the citizens of the livery, and, at the same operation, dissolved the electoral exclusiveness of the special freemen of the Wards, was hardly

* Examination and Resolution of two Questions—1, *Whether unfreemen can vote in our Wardmote elections?* 2, *Whether freemen, paying to one or more scots, and not to all, shall be qualified to vote in those elections?* Humbly addressed to Sir William Thompson, knt., and to John Lingard, esq., Com. Serjeant. By a Citizen. Fol., 1724.

likely to have borne with, even a semblance of the original government of the Magnates, which, in its gradual concessions to the increasing importance of the consultative Commonalty, had at last made resistance, at a point which seemed defensive of the very existence of their order, as invested with the government of the city—and of the distinct power of their court, as a member of the legislative council. The question which involved these particulars,—whether the decision of a majority of the commonalty of the council could be negatived by a majority of the aldermen,—was one which early attracted the rising spirit of the age. It had been disputed in the year 1644*—and as early in the republican government as the 28th February, 1648, an ordinance of Parliament took away the supervisional control of the Lord Mayor and Aldermen, and directed that all questions be decided by a majority of those present; and, moreover, that the Council might not be dissolved by the authority of the Mayor, but should continue its sitting so long as such majority might think fit.

No question of political rights, perhaps,

* Jor. Atkin, No. 40, f. 121 b. "A plea for the Commonalty of London, or a speech delivered in the Common Counsell, on Munday the 24th February, 1644. By John Bellamie." 1645.

ever created a greater degree of interest or fierce contention, than did this of the negative of the aldermen; and although the concession was ultimately made by parliamentary authority to the intelligence of the eighteenth century,* yet, as a question of history, there can be no doubt that such a power had existed in the government of the aldermen, as a controlling check upon the *extended* commonalty admitted to legislative authority; for whatever may have been the principle of the earliest council of citizens, known as the "Council of the Mayor", and the "Council of the City,"† the practice of its representative and multiplied character seems to have been purely consultative or assentive, without a legislative equality; and this position is clearly borne out by the *petitiones communitalis* quoted by Stow.‡ Nor, in the simili-

* By Act of the 19th Geo. II, c. 8.

† Antè, p. cxlix.

‡ Die Mercurii, &c. On Wednesday before the feast of the Annunciation of the blessed Virgin, in the 5th year of the reign of King Edward, son of King Edward, a congregation of the *honest men of the city* was made; present, John Gisors, Maior, William Servat, John de Wengrave, Nigell Drury, &c., Aldermen; whereon *they prayed the Articles* underwritten *Lib. Horne, Stowe, v. ii, p. 377.*

The next citation affords, also, evidence of the early distinct consideration of the *Trade classifications* of the ci-

tude of the national parliament, which is commonly claimed for the city assembly as complimentary to her institutions, would any other position be so correspondent to that of the "*poveres communes*" (so self-styled were the representatives of the people)—who in terms

tizens, independently of that of Householders of the Wards :

On Friday next before the Feast of St. Nicholas, in the 8th year of King Edward, the son of King Edward, were gathered together at *Gyhalde, London*, John de Gisors, Maior, and many Aldermen, and *honest men of the city of every Trade*, who came to treat upon certain articles and businesses *for the whole Commonalty* ; and shewed certain grievances following, *to the Maior and Aldermen*. Upon which they propounded certain Articles for the Common profit, &c. It is agreed that *the said Maior and Aldermen* more diligently enquire upon these grievances ; and *that they provide a reasonable remedy* thereupon as is fit.—*Lib. Horne, fo. 427 ; Stowe, v. ii, b. v. p. 377.*

These entries bear testimony of the legislative government of the Aldermen, anterior to the association of the Commonalty in any other character than that of a consultative body. The Aldermen, however, in defence of their power of negation, dated their authority from a charter of the 15th Edw. III, which, somewhat to the same purport,—“ grants and confirms to the *Mayor and Aldermen* of this city, that if any of the customs of the said city hitherto obtained and used, were in any part difficult or defective, or anything in the said city newly happening, where before there was no remedy, should need amendment, the said *Mayor and Aldermen*, with the *assent of the Commonalty* of the said city (*as often as they*

so humble, "*prient et supplient*"—thus addressed, not only the king, but the barons; and concluding their appeal—" *pur dieu et en œuvre de charité.*" *

The modern ideas of civil rights are as little recognized in such a fact, as they are in the

thought expedient), should apply and ordain a fit remedy." —*Rot. Chart.*, 15 *Edw.* III, No. 12.

In the report of a committee of Aldermen, appointed in the year 1724, to investigate this matter in dispute, they say, "we find under the date of the 13th Nov., 1676, entered in the Repertory of the Court of Lord Mayor and Aldermen, by order of that Court, the opinions of Sir William Jones, Sir Francis Pemberton, Sir John Maynard, Sir Francis Wynnigton, and Mr. Steele, upon the negative claimed by the Lord Mayor and Aldermen in Common Council; who all, excepting Mr. Steele, gave their opinion that *the Lord Mayor and Aldermen had the power they claimed*, in making the laws and ordinances in Common Council."

These opinions, which are very long, learned and argumentative, are appended to the Report, as extracted from the registry (*Rep. Davis*, No. 82, f. 28 a); and the dissent of Mr. Steele is explained, for that he was a republican, and had been one of the Commissioners for the trial of the King. Chosen Attorney General, and, with others, appointed to draw up the indictment against the monarch, he so acquitted himself as to obtain the Recorder-ship of London, by ordinance of the Parliament (*White-lock's Mem.*, 363; *Jor. Andrews*, No. 41, f. 1 b.) Further, see "Report of a Committee of Aldermen, in affirm-

* *Rot. Parl. passim.* Crabbe, *Hist. Eng. Law*, p. 233.

correspondent circumstances of the civic rule at the same period. Nor, indeed, in a senate so composed as that of the Common Council of London,—of two chambers, Mayor and Aldermen, and Commons, consorting in one assembly, of whom the Commonalty, in their

ance of the right of the Mayor and Aldermen to put a negative to Bills and Acts depending in the Common Council of London." Fol., 1724; "Letter to Mr. William Timms, one of the Common Council of Cripplegate Within, containing an Answer to the Report of a Committee of Aldermen, lately made public," &c. Fol., 1724: "A brief State of the several Disputes and Grievances at present complained of in the City of London, with some observations thereupon, and upon the Bill now depending in Parliament." Fol., 1724.

Another matter of dispute, involving a principle of distinct control, which shews the onward march of the Commonalty, and the defensive position of the Aldermen of a matter clearly within their province, is mentioned by Bohun:—"On Thursday, Sept. 11, 1711, Sir Gilbert Heathcote, knt., Mayor, a Common Council was called, on pretence to pass the Orphans' Bill; but there having been a Bill depending for twelve months past, relating to the election of Alderman, a question was proposed—Whether that Bill should pass or not? Which the Lord Mayor opposed, and would not put the question: but after three hours' debate, a clause of the bill was left out, which had occasioned all the twelve months' contest, viz. *That all controverted elections relating to Aldermen should be decided by the Common Council, and not by the Court of Aldermen themselves*; which clause, though highly just, being expunged, the said Bill passed."—*Priv. Londini*, p. 57. Vide antè, p. cccxxxix.

numerical proportion, must always have commanded a majority,—does it appear that any balance of power could otherwise have been maintained, than by the negative of the upper chamber, constituting the numerical minority, which seems to have accompanied the admission of the extended Commonalty to a legislative voice in the civic council.

The dissensions of the citizens had thus acquired a threefold character, as the advance of the Commonalty came in contact with the government of the Aldermen, at the antagonist points of defence ; and although the restoration of kingly rule had professedly restored all the institutions of the country, usurped under the Commonwealth, and those of the city of London in particular, to their former position,—yet, in this instance, it seems to have been merely nominal in its operation, and rather the privilege of contesting for supplanted power, than a restoration, accompanied by an authority necessary to enforce and maintain its exclusive position.

Thus, in the elections within the Wards, the dispute is stated to have been : 1, *That the Freemen Householdors in Scot and Lot, claimed the sole exercise of the franchise ;* and, 2, *That the unfreemen, in like circumstances, claimed an equal right.* And in

1692, in the mayoralty of Sir Thomas Stamp, the votes of the non-freemen had become so numerous, and they asserted their pretensions with so much pertinacity, as of right, that it became necessary to ascertain and decide in whom the right of election did in reality vest; and this matter was promulgated by Act of Common Council of that year, declaring—

That it then was and anciently had been the right and privilege of the Freemen of the said city only, being householders, paying scot and bearing lot, and of none other whatsoever, in their several and respective Wards, from time to time, as often as there had been or shall be occasion to *nominate* aldermen and *elect* Common Councilmen for the same respective Wards, &c.*

* This ordinance further re-enacted the ordinances for the conduct of Wardmote assemblies and elections, extracted from *Liber Albus*, and elsewhere referred to, as follows:—

To the intent and purpose that due care may be taken for the future, and all persons for the time to come may take notice thereof, and proceed in such elections accordingly—Be it ordained, that at all and every Wardmote hereafter to be held, all and every Beadles and Beadle of the respective Wards of the city shall and do prepare, return and deliver, to the Aldermen of the several and respective courts of Wardmote, or to such persons as shall be deputed or authorized to hold the same, one List, to the best of his or their knowledge, of all and every the Freemen Householders as aforesaid, dwelling and residing within the several Wards of which they are Beadles, and no others, apart and by themselves; and also

Notwithstanding this ordinance, a practice once obtained became difficult of abolition—and it is stated that some Mayors and Aldermen continued to admit the unfreemen to vote; while others, again, always rejected their pretensions as unfounded in right, and with the avowed object of bringing the question to an issue; but no one ever sought to establish his claim by an appeal to a court of law.*

one other List, to the best of his or their knowledge, of all and every other Householders within the said respective Wards only, apart and by themselves, to the intent that such Freemen Householders within their respective Wards only, as often as there is or shall be occasion, may *nominate* Aldermen and *elect* their Common Councilmen; and they, together with the other Householders of the said Ward, may choose their Constables, Scavengers, Inquest and Beadles.

And for the preventing all errors and mistakes touching the premises for the future, and that this be duly put in execution for the time to come; Be it also enacted, that to all and every Precept and Precepts hereafter to issue for summoning any Wardmote or Wardmotes, this present Act be annexed and affixed; and that before any nomination or election (as aforesaid) be made at any of the aforesaid court or courts of Wardmote, the same shall be publicly and distinctly read and declared to the persons who shall be and appear at such court or courts, and be duly put in execution and observed."

* An Act of Common Council for regulating the Election of Alderman, passed Sept. 11, 1711, directed that "none but Freemen paying Scot and Lot shall have a

Nor did the elections by the freemen of the Livery, whose visible identity had now merged in the merely nominal registry of their distinction, recover their exclusive and representative character, which seems to have been lost in the confusion of the Commonwealth ; so that in their recognition, greatly multiplied in number as they had become, since the adoption of their identity as an electoral distinction, they rather appeared as *principals* in a contest with their assumed constituency, the freemen of the Crafts, and the still less qualified non-freemen of the Wards, than as a special electoral commonalty—" *les plus sages et loialx de mesme la cité*" *—the " wisest and trewest," † who, by their " gode and paisable avys," were in the exercise of a supposed representative and delegated trust.

Such was the position of increasing confusion, under the incomplete re-establishment of social order with the restored monarchy, disturbed as it was by the troubles of subsequent times. Ordinances of the Common Council,

right to poll for Aldermen." And 'tis said an Order was then made, that if any action-at-law ensued by reason of the said Act of Common Council, it should be defended at the city charge.—*Priv. Lond.*, p. 58.

* Petition of the Cordwainers, antè, p. cccxiii.

† Petition of the folk of the Mercery, p. cccxii.

and proclamations of the Executive, were fruitlessly passed and issued against the assumptions of the non-freemen; while the freemen were in revolt against their sworn brethren of the Livery. In the Wards, the opinions of the several presiding officers at the Motes were by no means agreed, nor was their practice uniform. It was moreover held, that Acts of the Common Council could not annul rights which had accrued (as was asserted) from prescription—the prescription of disorder and misrule. Some of the Aldermen even lent themselves to this opinion, in favor of influential mercantile men, who declined the city freedom, by reason that it controlled the disposition of personal property, of which their wealth principally consisted, yet were in Scot and Lot, and by recently acquired custom, under the ordinance of the Commonwealth, had been used to vote at the district elections. Hence, a division in the upper chamber also resulted, and, for a period of twenty-five years preceding the application to Parliament, every contested election became the increasing occasion of popular strife, not more between the rival candidates, than the voters and returning officers: and as the court of Common Council was not of opinion with the Aldermen—nor were the latter una-

nimously agreed—there appeared to be no means of arriving at any result that could be considered final and binding upon all, without the intervention of Parliament.

The allegations of the petitioners, on this occasion, afford a concise review of the interval in the narrative. They stated their franchise and their dilemma as follow :

That the citizens to serve in Parliament, the lord mayor and sheriffs, with some other officers, are chosen by the Livery of London ; the aldermen, common councilmen, and some other officers, are chosen in their respective Wards by the householders paying scot and lot ; and the petitioners apprehend all their disorders spring from the annual election of preceding officers.

At the elections of the liverymen, numbers of people that have no right to vote, break in, with noise and violence, upon the legal electors, as often as they think they may without being detected ; and at the late election of a sheriff, in the room of Sir Felix Feast, deceased, *many hundreds appear to have polled without any colour of right* ; and at the preceding election, even the Sheriffs of London, without example, concealed the numbers of the Poll for each candidate, though the Liverymen several times demanded the same :

That for want of a law, nonjurors and persons receiving charity, have demanded and been admitted to vote : that at the elections by the Wards, frequent contests arise: the unfreemen contend that they contribute to the charges of their respective Wards, and that thereby, and by law and custom, have a right to vote at the election of Ward officers ; but this the freemen will by no means allow ; nor will the unfreemen entitle themselves to vote by a purchase of their freedom, alleging that, thereby, they res-

train themselves from disposing of their estates by their wills ; and yet carry on considerable branches of commerce within the said City, yet are exempt from all offices therein.*

That it has also been contended, that such freemen as are householders, paying to the Church and Poor, ought to be deemed to have paid their Scot, and to be entitled to vote for Ward officers ; but others contending, that paying of Scot was not paying to some, but a general contribution to all the public charges upon the city of London, or the inhabitants thereof : and this dispute coming before the Court of Aldermen, was, upon inspecting the City Charters and Records, and great deliberation thereupon, decided by an adjudication, that paying Scot was a general contribution ; but the Common Council not approving this adjudication, brought in a Bill tending to appoint a different sort of qualification ; and to oblige the Mayor and Aldermen, by forfeitures, to declare under their hands, the names of each voter they should disallow, and thereby become subject to the numerous actions of such rejected voters ; so that the Mayor and Aldermen disliking the Bill in general, fresh causes of dissension

* The repeal of this circumstance of civic freedom (one of the innovations complained of by the petitioning freemen), which multiplied the Liverymen of the special freedom seven thousand in the following century, had been of frequent complaint, as prejudicial to the commercial interests of the city ; and had operated to the premise of the charter of Charles I, " that several the sons of freemen of the said City, and others, who have served seven years' apprenticeship, do refuse to take up their freedom, but notwithstanding use the trade of merchandizing, whereby they obtain great estates, and by not taking up their freedom, free themselves from the burthen of public office, &c."—*Rot. Chart.*, 14 Charles I.

appear between the Aldermen and Commons: whereupon they pray the relief of the House for preserving the liberties and peace, and quieting the minds of the citizens: and for punishing all intruders upon the rights and privileges; and settling their elections upon a just and lasting foundation.*

This petition was presented to the House of Commons on the 16th December, 1724 (11th Geo. I), when leave was given to bring in a Bill, embodying a remedy for the evils represented and complained of, and the preparation thereof entrusted to Sir Gilb. Heathcote, ald., Sir J. Eyles, ald., Mr. Recorder (Sir Clement Wearg, also Solicitor-General), and Richard West, esq., K. C.; the latter of whom, on Wednesday, the 27th January, presented to the House, "*a Bill for regulating Elections in the City of London,*" which was then read a first time. The following is a narrative of the subsequent proceedings, principally collected from the journals of each House:—

On Monday the 1st of February. "Some of the Aldermen and several of the Common Council" attended at the Bar, with a petition of "the Lord Mayor, Aldermen and Commons of the City of London, in Common Council assembled," setting forth:—

* "Petition of many citizens of the city of London, in behalf of themselves and their fellow-citizens," to the House of Commons. Decem. 16, 1724.

That there being a Bill now depending in the House, for regulating elections in the city of London, and for preserving the peace, good order, and government of the said city, the Petitioners apprehend that if the said Bill should pass into a law, it will be destructive to many of their rights and privileges, which, by ancient charters, they and their fellow-citizens are entitled to : and praying that the Petitioners may be heard by their Counsel against the said Bill.

On Wednesday, the 3rd February, a petition was presented from the "major part of the Aldermen of the city of London,"* praying to be heard by Counsel for the said Bill.

On the 8th February, the Bill was read a second time ; when the Counsel for and against the Bill were heard, examined witnesses, and put in evidence various extracts from a book called *Liber Legum*, copies of several Acts of Common Council, journals, &c.

Feb. 10. Counsel for the Bill were in part heard, and examined witnesses, and produced evidence from the

* The petition of the major part of the Aldermen set forth :—

" That of late years, many evil practices and unhappy disputes having arisen within the said city, greatly tending to disturb the good order and government thereof, which Petitioners apprehend cannot be determined but by the interposition of Parliament.

That the Petitioners have taken a copy of the Bill now pending in the House for regulating Elections in the City of London, and for preserving the peace, good order and government of the said City, and are of opinion that the same is not only consistent with, but will also establish a lasting foundation of, *the true rights and privileges, both of the Magistrates and Citizens of London*, and tend to restore peace and tranquillity within the City :

Tower of London ; and also read extracts from *Liber Legum*, &c.

Feb. 15 & 17. Counsel for the Bill further heard.

Feb. 18, 24 & 26, and March 3. Bill considered in committee.

On Thursday, the 4th March, petitions to be heard by Counsel against the Bill, were presented from the Keepers and Wardens of the Company of *Broiderers* of London ; from the Company of *Joiners, Ceilers, and Carvers* of London ; and from the Wardens and Society of the *Mystery of Leathersellers* of London.

March 6. The Bill further considered in committee.

March 11. Amendments of the Committee taken into consideration. One of these proposed that, after the word "city," the words, "according to the ancient constitution of the same" should be inserted, which was carried by 135 to 84.

March 13. Amendments further considered ; and, upon motion that the Bill be read a third time, the same was carried by 96 to 43.

March 19. The Bill read a third time, and passed by a majority of 139 to 83.

That they observe there is a clause in the said Bill, touching the right of passing Acts or Bye-laws in Common Council ; *this dispute was never moved by any of the Commons till the time of the civil war*, nor attempted since till lately ; and then, that nothing might be wanting to end the same amicably, they did, on the 20th March, 1723, by their Recorder, propose to the Commons in Common Council assembled, that a proper application should be made to any of the Courts of Westminster Hall, or else to Parliament, to determine the controversy between them ; but the Commons did not think fit to comply, or take any step towards it, whereby the government of the city must eventually run into the utmost confusion, &c.

March 22. The Bill read the first time in the Lords.

March 23. A petition presented from the Mayor, Aldermen and Commons of London, in Common Council assembled, praying to be heard by their Counsel against such parts of the said Bill, as they humbly apprehend to be prejudicial and inconvenient, before the same do pass into a law.

March 24. Petition of the major part of the Aldermen of the city of London, praying to be heard by their Counsel for the said Bill.

April 1. The Bill read a second time, and referred to a Committee of the whole House. And ordered, upon motion, that no more than two Counsel for, and two against the Bill be allowed. Certain Witnesses also (27 in number, who are named) were ordered to attend the Committee, to give evidence.

April 5. A "petition of the Freemen of the City of London, on behalf of themselves and their fellow-citizens," *

* The petition of the Freemen represented that the Bill, as transmitted to the Lords, would not only, as they apprehended, highly affect the rights and privileges of the freemen in particular, but the laudable and ancient government and customs of the city in general :

For that the said Bill takes away from great numbers of the Freemen (other than Paupers and nonjurors) the undoubted rights which they before had, of voting in their corporate elections, &c.

For that it destroys the former qualification of a Voter in Wardmote Elections, and hath substituted a new, complicated and uncertain one in the room of it, &c.

For that the said Bill, in effect, leaves all the remaining votes of the city at the mercy of the presiding officer, who may still declare as he may be inclined, without granting a copy of the Poll scrutinized, or giving any account of what votes he allows or disallows, whence the remedy, ei-

praying to be heard by their Counsel against the Bill, was presented ; and being referred to the Committee on the Bill, it was ordered " that the Petitioners may be heard

ther for the injured candidate or voter, becomes exceedingly difficult, if not wholly impracticable.

For that the Bill in a manner abolishes the ancient and laudable custom, of distribution of freemen's personal estates, so agreeable to natural equity, and so wisely adapted to the prosperity of a trading city, without just occasion, and upon suggestions not well grounded.

Lastly,—For that, by the same Bill, the Commoners in Common Council, who are 234 in number, and though they are all unanimous, may nevertheless be restrained from applying to His Majesty, or either House of Parliament, upon any occasion, how necessary soever ; from issuing out of the Chamber so much as one farthing upon any occasion, how just soever ; or seal any city lease, though upon terms ever so advantageous, or come to any resolution whatsoever, and how reasonable soever, without the consent of the Mayor and Aldermen or the majority of them, though there should be no more than three of them there present ; and this, it is said, by the ancient constitution of the city : and yet, which is very extraordinary, the same Bill lays no restraint upon the power which the Lord Mayor and Aldermen exercise themselves over the public purse and the Seal, which is now become very great and extensive. If such hath been the ancient constitution of the city, the same hath been so ancient that few or no footsteps thereof have remained to this day ; and that in the memories of the oldest of us, the same hath never so much as been claimed or mentioned by the Mayor or Aldermen, except twice only, first in the year 1674, and now again very lately—and both times as soon relinquished as mentioned, &c.—*Hist. Register, No. XXXIX, 1725.*

by Counsel, according to the prayer of the said petition, under the former restriction, that no more than two Counsel be heard against the said Bill, or any part thereof."

April 6, 7, 8 & 9. The Bill considered in Committee.

April 10. Amendments of the Committee reported to the House and agreed to. Among these amendments were perhaps the most important portions of the Act, viz. the entire addition of the 5th, 8th, and 9th sections.*

April 13. The Bill read a third time, and upon motion it was proposed to ask the opinion of the judges—whether this Bill does repeal any of the Prescriptions, Privileges, Customs or Liberties of the city of London, restored to them or preserved by the Act passed in the second year of King William and Queen Mary, for reversing the judgment in a *Quo Warranto* against the city of London, and for restoring the City to its ancient rights and privileges? Which being objected to, and debate had thereon, the question was put—whether the judges shall deliver their opinions upon the said proposed question? And that being negatived by 83 to 24,† after long debate, the ques-

* Vide App., pp. 245-6-7.

† Upon this result, sixteen of the minority recorded their dissent, to the effect, firstly, that because the Act declared the Mayor, Commonalty and Citizens, shall for ever remain, &c., a Body Corporate, *in re, facto et nomine*, &c., and shall, as by law they ought, peaceably enjoy all their Rights, Liberties, Privileges, &c.; and they, the Dissentients, being apprehensive that the alterations made by this Bill, may work a total change of the whole ancient constitution of the Corporation of the said City, or greatly confound or prejudice the same; they were of opinion that the solution of the same by the judges must have tended greatly to their better judgment, as well as to the satisfaction and quiet of the Citizens of London, who, from the petitions against the Bill, are greatly

tion was put—whether this Bill with its amendments do pass? which was resolved in the affirmative, by 79 to 27.*

The Act so passed, being the subject of the following learned Treatise of Sir WILLIAM MILD MAY, will bring this lengthened Intro-

alarmed at the consequence thereof. And secondly, they thought the question ought to have been proposed to the judges the rather, because the opinions of several Counsel were admitted to be read at the bar of the House, in favor of the said Bill.—*Lords' Protests*, v. ii, p. 3.

* To the passing of the Bill, twenty-five of the minority (including the sixteen dissentients upon the previous motion) recorded their reasons, viz. twenty-two for the following,—1st. Because they apprehended the penalty of 200*l.* upon the officer presiding at Wardmote elections, as well as at elections even for members of Parliament, was so small, that it might be construed into an indemnification, and be looked upon rather as an encouragement than a restraint by a wealthy, partial, and arbitrary officer; at least, that such would not be sufficiently deterred by it from returning such candidates as he liked, rather than such as the city had chosen, &c.

2ndly, Because they thought, from the evidence given at the Bar, that the Bill would take away from many citizens their right of voting on Wardmote elections, by giving an exclusion to all that inhabited houses under 10*l.* a year, even though they paid all parish dues, or 30*s.* in lieu of them; which they conceived an unjustifiable hardship upon those who may have long enjoyed that right, &c.

3rdly, Because no Act was to pass in Common Council for the future, excepting those relating to the nomination of some few officers, without the assent of the major part of the Mayor and Aldermen present in such Common Council, which they conceived would give too great an addition of power to the Mayor and Aldermen, who had

duction to a close ; but, having stated the progress of the measure, with the case on both sides, as set forth in the statements of the Petitioners,—and the fears of the minority of the Upper House, as declared in their

already many large prerogatives incontestably allowed them by the Commonalty of the City ; and though the Council for the Bill insisted that the Mayor and Aldermen had anciently that right which the Bill established, yet the proof of that right appeared to them so remote and obscure, that *they owned themselves too short-sighted to discern it* ; and on the other side it *appeared plain to them*, that even from the time of incorporating the City [*was the date then given in evidence?*] to the then present, such a claim had very seldom been made, and that it had never been acknowledged ; and therefore they conceived if there had been any foundation for such a right, the dispute should have been decided first in the inferior courts of justice, &c.

4thly, Because the Bill abolished the custom relating to the distribution of the personal estates of the free citizens, which was not only a custom of great antiquity, but seemed to them wisely calculated for the benefit of a trading city, and had been acquiesced under for so many years, without the least complaint of any one free citizen, that they ever heard of ; that the taking it away in this manner was rash and precipitate, and in their opinion might be very detrimental to the true interests of the ancient and loyal city, &c.

For the foregoing Reasons and the following, were the three additional Dissentients, viz. :

1st, Because the several great alterations made by this Bill in the ancient constitution of the Common Council,

recorded protests, embodying the delusive representations and incomplete facts of the opponents of the Bill; it seems necessary to the comprehension of its real operation, to shew the facts upon which the legislation

and other the rights, franchises and prescriptions of the city of London, will, if passed into a law, entirely subvert and destroy the ancient title which the City at this time lawfully claims, and will introduce a new constitution upon the city hereafter to be claimed and enjoyed, not upon the foundation of their ancient title, but upon this Act of Parliament, which may, in all future time, lead to insuperable difficulties, &c.

2ndly, That the new constitution of the Common Council enacted by this Bill, whereby a negative is declared and given to the Mayor and Aldermen, is a dangerous innovation, unsupported by any evidence offered at the bar, of the ancient constitution; and though in late times mentioned to be claimed, yet contrary, as we conceive, to a clear, uninterrupted, and convincing proof of the exercise of the powers of the Common Council in all ages, down to the 29th January, 1723, &c.

3rdly, That the extraordinary power given by this Bill to the Mayor and Aldermen, will vest in them new exorbitant authorities over all the citizens, their rights, liberties and franchises of all kinds, inconsistent with that balance of power in the City by which the same have been preserved; and must, as we conceive, lay the foundation for constant and lasting disputes, &c.

4thly, We think this Bill is the more dangerous, because it creates a new Constitution in several particulars contained in it, not framed upon the ancient rights, proved or pretended to, or disputed on either side, but is a new model, without due regard to antecedent rights, as

had been based, as afforded in the following data, collected for the information of Parliament, viz.:

That within the twenty-five Wards of the City, the number of houses or tenements are—

claimed by either side, and will deprive a great number of citizens of their ancient rights and franchises in elections and otherwise, without leaving them any opportunity of asserting the same by due course of law, and is a precedent of the most dangerous consequence to all the voters and corporations of this Kingdom.

5thly, That the ancient custom of the city touching the personal estates of freemen is a dangerous innovation, tending to let into the government of the City, persons inexperienced and unpractised in the laudable and beneficial trade of the city and kingdom, and unfit for the magistracy of the city, and may introduce improper and pernicious influences over the citizens; and we think that the strength, riches, power and safety, of the City of London have been hitherto, in a great measure, supported by this and other customs of the City as the walls thereof; and we fear that the decay of trade, and with that, of the grandeur of the City, and the diminution and loss of the great excises and duties arising from the trade of the city, on which the support of His Majesty's government so much depends, may be the consequence of the abolition of this ancient custom, &c.

6thly, Because we are of opinion that the Petition of the many thousand Freemen of the City against the Bill, ought to be of far greater weight than the petition of fifteen Aldermen for it; and that the confusion which may arise, may tend greatly to the future disturbance of His Majesty's wise and gentle government.—*Lords' Protests*, v. ii, p. 7—10.

Of £10. per annum and upwards . . .	12,772
Under £10. per annum . . .	6,376
Total number of Houses . . .	<u>19,148</u>

The number of Freemen, occupiers of the said Houses, about . . .	10,850
Non-Freemen . . .	5,444
Women . . .	<u>2,854</u>

The number of Freemen, occupiers of the te- nements under £10. per annum, about .	3,176
Non-Freemen . . .	2,000
Women . . .	<u>1,200</u>

Half of the 6,376 tenements under £10. per annum, are from 20s. to £5. per annum, 4,390 whereof are in the four wards of Farringdon Without, Cripplegate Without, Bishopsgate Without, and Portsoken without Aldgate.

About 500 of the 3176 Freemen, occupiers of these small tenements, are rated to the poor; but do not constantly pay that little they are charged with, but are generally kept on the poor's roll to be ready to serve election purposes; and are so far from being able to contribute to any tax, that they are for the most part objects of charity.

The "new Constitution," said to have been acquired to the city of London by this measure, had a twofold operation; and if it did an apparent injustice, in disfranchising within the Wards the poor freemen, and those in humble circumstances, upon the plea of a property qualification, which had not been recently enforced, *though it does seem an important character of the principle of a free-*

man in scot and lot ; it, on the other hand, effected an important restoration of the original principle of the special incorporation, by excluding from voting at Wardmote elections *three thousand* non-freemen, renting premises at from £15. to £200. per annum, who were among the most wealthy inhabitants of the city, and paying to ward and parish rates from 40s. to £10. per annum.

Beside these, there was another numerous class also disfranchised, which had greatly contributed to the sum total of the thousands of the petitioners against the Bill, viz. freemen who were neither rated, nor rateable, by any distinct occupancy, to the Scot and Lot of the Wards ; but who, as merely freemen, had been admitted in certain Wards to vote, and whose rejection upon scrutiny had occasioned great disorders and clamour against the returning officers.*

Thus, the operation of the measure within the Wards, as affecting the rights or supposed rights of burgage, were these :

That it disallowed the votes in respect of 6,376 tenements, held at rentals under ten pounds per annum.

That it declared to be illegal the assumed

* Hist. Reg., No. XXXVII ; 1725.

right to vote of 5,444 *non-freemen*, of all denominations; 3,444 of whom occupied premises of £10. per annum and upwards, which (if freemen) would have entitled them to the burgage right.

That it disfranchised 3,176 poor freemen, occupiers of the small tenements under £10. per annum; as also all freemen (as lodgers, inmates and the like), not occupying by any tenancy that would bring them within the liability of the scotting and lotting of the Wards, as the original principle of the tenancy of the Leet.

That it confirmed the electoral rights of citizenship to be in the freemen of the city of London, who should be of the Livery of the incorporated crafts,—as representative of the freemen of the same, upon the principle completed by the ordinance of the 15th Edw. IV,* leaving the franchise still open to increase, even to a possible generality, by the accession of the city freemen of the crafts to the circumstances of that qualification. The number so qualified, at the date of the confirming enactment, liverymen of sixty-one incorporated crafts, was 8,514;† and under the ope-

* Antè, p. cccxxvi.

† Return of the Town Clerk of the City of London to an Order of the House of Commons, 1724.

ration of the measure from which such ill results had been anticipated,—by inducing the wealthy non-freemen to become free, and thence, in their incorporated crafts, open to the acquirement of the electoral livery,—at the expiration of a century from the passing of the Act, the number of the qualified electors of the seventy-four companies then incorporated and admitted to civic rights, had multiplied to upwards of 15,000 liverymen of the civic freedom.

This vast extension of a special franchise, however, carried with its increase the consequences before noticed,* as resulting from the exclusive circumstances of its original representative institution. The freemen claimed admission to the franchise exercised by the Liverymen of their crafts; and perhaps the most forcible argument in their behalf might be found in the circumstance, that the electoral livery, in the discretionary power of the council of the incorporated Mysteries, had not in all cases been discriminated, in accordance with the principle that induced its original adoption as the electoral test and qualification;† and moreover that, in approach-

* Ante, p. cccxxxi.

† Nothing can be said for the *independence* of the four hundred freemen of the Fishmongers' Company, elected

ing so far towards generality, it had surpassed the limits of its institution, as a select council of representative electors. In this point of view the freemen of the crafts, as householders in trade, might have had a fair claim for consideration, either that they should be called to the electoral livery, or that the privilege should be thrown open to them in extension of a franchise, which, in its vast progression towards generality, had stopped short only at a point that created a distinction, groundless upon any principle of equitable right. If the one had not been open to them by the laws of their incorporated Mystery, or the will of its council to elect them to the clothing of the craft, the other, as a matter of expediency, might have been conceded. But the position that might thus have been taken, on a plea of equal justice, was, by injudicious and uninformed advocacy, demanded as an "original right by custom," not only vested in, but exercised by the freemen, from all known time, down to the "usurpation" by the Livery Com-

to the Livery under the circumstances stated by Ald. Wood (*antè*, p. cccxxii); even if they were qualified according to the original principle, as "householders in trade," and of the "more able of the diffusive body," as defined by ordinance of the Court of Common Council before mentioned.—*Antè*, p. cccxviii.

panies, and the still greater outrage, the Act of Geo. I, which, it was asserted, had confirmed the injustice !

“ It will be necessary for me,” said Mr. Newell, advocating this position, “ in going through the details of these transactions, to advert to the time when the citizens originally exercised the right by custom, when they had those rights confirmed to them by charters, and *when the first infringement by the Livery Companies on the rights of the citizens was made.*” *

“ First,” he continued, “ I take it to be a right founded on the common law, because I find that, in every city throughout England represented in Parliament, the Freemen exercise the right of voting for its members ;† a right, also, that did exist in the *citizens* of London until about one hundred years since (1725) : that it did exist in the *citizens*, is proved by the necessity (as those persons who procured the Act of 11 Geo. I. thought) of determining who, in future, should exercise that right.” ‡

* Facts and Arguments, 1830, p. 8.

† The advocate afterwards controverted his own assertion, by the evidence he adduced in support of his position. *Vide ante*, p. clxxxix.

‡ Facts and Arguments, p. 9. The difference of opinion between the advocate, and the framers of the measure he

This proposition, for “a restoration of those elective rights formerly enjoyed by the Freemen of London,” was brought forward in the year 1829, in the form of a petition from the ward of Cripplegate Without,* which having

disparages, seems to be as to the comprehensiveness of the term *citizen*. The object of the parliamentary measure referred to, was to confine and to confirm the franchise to the “citizens”—the *enlarged constituency of electoral citizens*, who had theretofore exercised the trust—freemen of the city incorporation, and liverymen of the incorporated crafts; yet, putting aside the first principle of his own argument, as well as of the special incorporation, and of the Act in question, viz. *the city freedom*, Mr. Newell elsewhere says, “the *only title* the Companies have to the elective rights, under the Act of Geo. I, is by *the purchase of a certain dress*” (*Ib.*, p. 26); and Mr. Norton, equally unmindful of the same speciality of the trading city, says that, “until the statute of Geo. I, it was not required that they should be freemen of the Corporation!”—*Comm. on Lond.*, p. 395.

* The petition of the freemen inhabitants of the Ward of Cripplegate Without to the Lord Mayor, Aldermen and Commons of the City of London, in Common Council assembled, praying “a restoration of those elective rights formerly enjoyed by the Freemen of London, and thereby to relieve them from a state of degradation, to which the Freemen of no other City in the Kingdom have been required to submit,”—set forth:

That the Freemen of the City of London were from ancient time entitled to meet in Common Hall, to vote for the Representatives of the City of London in Parliament, the Mayor, the Sheriffs, the Auditors of the city accounts, and other officers:

That the right so to elect some of these city officers is

been referred to a Committee of General Purposes, they, on the 29th April following, pre-

recognized, as existing in the citizens of London, by charter of King Henry I and King John ; that these, amongst other rights of the citizens of London, were sanctioned by Magna Charta, and solemnly confirmed by many charters granted by succeeding monarchs, and particularly by the statute of 2nd Will. & Mary, cap. 8 :

That those charters having been obtained by purchase, by right of conquest, or by valuable services rendered to the State, are as much the lawful birthright of the Freemen of London, as any freehold property obtained by purchase or inheritance, and that no power can justly deprive the Freemen of rights thus dearly obtained, and so strongly confirmed :

That the corporate rights of the whole body of the Freemen have, notwithstanding (by the statute of 11th Geo. I, cap. 18), been given into the hands of the several Trading Companies, who form no part of the Corporation, but by whom the privilege of being admitted on their Livery, and consequently of voting for members of Parliament and the city officers, is sold, granted or withheld, at pleasure ; so that every resident Freeman is made to depend upon the capricious selection and determination of the respective Companies, whether he shall or shall not be admitted on their Livery, and be duly represented in the city and in Parliament ; instances of delay and refusal being sufficiently notorious :

That it appears from Historical Records, that this partial and injurious measure of exclusion was adopted and carried into effect through an assumption of power, disadvantageous to the City, adverse to the spirit of its charters, and of the constitution of the Kingdom, &c. Signed by order of the Court of Wardmote, 29th Dec., 1829—Peter Earnshaw, Ward Clerk.

sented to the Court of Common Council their report upon its allegations, to the following effect :

That it having been referred to them, " to examine the allegations in the petition of the Freemen inhabitants of the Ward of Cripplegate Without, London, in Wardmote assembled, in relation to the Act passed in the eleventh year of the reign of his late Majesty, George the First, for regulating Elections within this City, and praying the Court to take measures to procure a Bill to be brought into Parliament, to repeal the disqualifying clauses in the said Act of Parliament against the Freemen of this City, and report our opinion thereon," the said Committee certified, that they had proceeded to take the said petition into their serious consideration, and had been attended by Mr. Joseph Newell, Mr. Johns, Mr. Poplett, Mr. Gorton, Mr. Pite, Mr. Bleloch, and Mr. Finden, inhabitants of the said Ward,—when Mr. Newell was heard at considerable length thereon: but not being prepared to adduce any evidence in support of the allegations contained in the said petition, they adjourned the further consideration of the question, to afford him an opportunity of producing such evidence as he might deem expedient; and having subsequently been attended by Mr. Newell and several other petitioners, he referred to various entries in the city's records, commencing as far back as the 28th Edward the First, which were read; and he was further heard.

" And we your Committee, having duly considered the said entries, and all the circumstances alleged by the Petitioners, *are decidedly of opinion that no evidence has been produced by the Petitioners, shewing that at any period there was a settled rule or custom, that the Freemen resident in London should elect the representatives of the City in Parliament, the Lord Mayor, the Sheriffs, the*

Chamberlain, or the Auditors of the City's Accounts; but, on the contrary, it was shewn that, until the reign of Edward the Fourth, such officers were elected or *appointed*, from time to time, by different persons; and it further appears, that from the period when the general political rights of the people became settled and defined, until the passing of the statute of the 11th George the First, the right of election was exercised (with a few exceptions) by the Livery of London: and we are therefore of opinion, that it is not expedient to recommend the Court of Common Council to apply to Parliament for the purpose of altering the right of election, thus supported by custom, and settled by statute. Dated 21st April, 1830."

In the progress of this enquiry, scarcely, indeed, contemplating the possibility of the *ultra* measure of William the Fourth, the Committee pertinently enquired, whether the effect of repealing the statute of the 11th of George I, would not be to disfranchise a considerable number of the present electors? and whether the Petitioners desired that the right of election should be placed in the *inhabitants alone*? *

The consequences that would have attended the grant of the prayer of the petition, and the result of "extending" the franchise to the resident freemen, or the "inhabitants alone," are obtained from the statement of the advocate of the measure, who, temporising with his subject, demonstrated that it

* *Facts and Arguments*, p. 39.

need not be opposed, at any rate, in the fear of popularity. "If it were possible," said Mr. Newell, "for the Court so far to accomplish the prayer of our petition, as to get the resident freemen of the city of London restored to their ancient rights, I should contend then, that instead of the number of electors being fourteen or fifteen thousand, as it now is (1830), in the city of London (with the probability of this number being increased)—I contend that *it would have a tendency to decrease that number.** The datum upon which this conclusion had been founded was, that in 1826, the resident freemen within the walls were 7,400 only,† two-thirds of whom were estimated to have been liverymen: so that, upon his own shewing, the successful result of the application would have been, to increase the electoral franchise of the freemen

* Facts and Arguments, p. 21.

† Return to an order of the Court of Common Council, Oct., 1826. The number of the houses within the walls, at the same period, were stated at 18,185; "and out of that number," said the advocate, "you have only 7,400 freemen. The consequence is, that *all the rest that are resident in the city of London, in those houses, are non-freemen*" (*Facts and Arguments*, p. 39). Such a consequence, however, does not appear so probable, as that a large proportion of such premises should have been in the *trading occupancy* of freemen of the Livery, not actually resident within the walls,

inhabitants *not of the Livery*, by about 2,500 ; and to *disfranchise twelve thousand freemen who were of the Livery*—including the most extensive merchants and traders of the city freedom, *not actually resident* (according to the ancient circumstances of a trading freeman—"with his family") within the walls.

The narrowed construction of the occupancy upon which this proposition had been based—paring down the civic franchise to an actual inhabitancy, which it has elsewhere been shewn had never been required nor contemplated, further than *for the purpose of enforcing its liabilities*,* was too much at variance with the existing state of society, to find encouragement, which it could neither claim upon a plea of expediency, nor maintain as a practically vested right. The legislative measure of George the First, indeed, calculated to preserve the spirit of the trading freedom, progressively with the extension of commerce, and the more than proportionately decreasing accommodation for actual residence within the liberties, had discouraged the franchise by inhabitancy, in favour of a trading occupancy, more consistent with the increasing

* Antè, pp. xxvi, cclxi.

operations of a great commercial city;* and that this enactment had been wisely calculated for future events, is apparent from the statistics of succeeding time.

"In the year 1700," says Mr. Norton, "the population of the ninety-seven parishes within the walls were estimated at 139,000, which, by the altered habits of life amongst the people, and the vast accession of trade to the port (which has converted the city into an immense warehouse, rather than a place of residence), had, by the census of 1811, been reduced to 57,000 regular inhabitants within the walls. And there is little doubt that the decrease is still proportionate, as the increase of commerce requires the dedication of more ground to mercantile purposes, and as the march of improvement shall sweep away habitations for the accomplishment of wide streets, open spaces, and more pure ventilation—a consideration of vital importance to the Corporation, as far as regards the rights and franchises of freemen with respect to their residence."†

* Vide App., No. VII, p. 248, "Extended Franchise as to Partners in Trade;" and App., No. VIII, p. 249, "Limitation of Franchise as to Inhabitants." Also pp. 86, 92, 94 *et seq.*, 172.

† Comm. on Lond., p. 540.

In the presence of facts such as are here stated, and with a prospect in result such as they contemplate, the tendency of enforcing actual residence upon the freemen of London, as the qualification for its electoral franchise—or rather that of disfranchising all such not so residing, would have been to accomplish the no less gradual than certain extinction of the special identity, in the exact proportion that, on the one hand, the accommodation for actual habitation decreased—and, on the other, that the number of resident non-freemen multiplied in occupation of such diminishing space; and both these adverse circumstances, it had been shewn, were in active progress towards such accomplishment. Mr. Newell had already contended, that 18,185 houses supplied only 7,400 resident freemen; and Mr. Norton had remarked, that the increase of resident non-freemen, by the remissness of the Corporation, had already effected a considerable inroad in the civic constitution. And here the excellent observations of the same author, quoted at a previous page,* are particularly applicable. “If,” he observes, “strangers who may find inducement in carrying on trade within the city, are allowed to

* Antè, p. cclxvi.

do so at their discretion, without incurring the expense and burthen incident to the assumption of the civic freedom, the number of non-freemen will go on increasing, in proportion to the superior local or natural advantages afforded to commercial pursuits, until the original freemen are nearly or altogether supplanted.....It is, therefore, not only necessary that the Corporation should possess these rights, but that they should be constantly enforced.*

If the trading freedom formed a principle so vital of the civic incorporation, as representative of a commercial community, a position, under the circumstances stated, less concurrent with its preservation could hardly have been devised, than the proposition of confining its electoral voice to the rapidly diminishing qualified residents. But a measure of annihilation by incipient suicide, that was not destined to take effect under the delusion of an alleged "restoration of usurped rights," has since been otherwise accomplished, and the representative civic constitution doomed to a more violent death as a measure of "reform;"—a legislative measure that seems exactly to have fulfilled one of the

* Comm. on Lond., p. 237.

prophetic allegations against the statute of George the First, viz. "that it would introduce a new constitution upon the city thereafter to be claimed and enjoyed, not upon the foundation of the ancient title, but upon this Act of Parliament." * A result that, in the former case only virtually contemplated, was distinctly effected by the statute of William the Fourth, which declared, from the commencement of such enactment—

That no person shall be entitled to vote in the election of a member or members to serve in any future Parliament for any city or borough, save and except in respect of some right conferred by this Act, or as a burgess or freeman, or as a freeman and liveryman, or in the case of a city or town being a county of itself, as a freeholder or burgage tenant, &c. †

And notwithstanding the apparent recognition of existing rights, the franchise of the freemen of the Livery was curtailed by the following clause, declaring—

That every person who would have been entitled to vote in the election of Members to serve in any future Parliament for any city or borough, either as a burgess or freeman, or in the city of London as a freeman and Liveryman, if this Act had not been passed, shall be entitled to vote in such election, provided such person shall be duly registered, according to the provisions hereinafter

* Lords' Protest, *antè*, p. ccclxiv.

† 2 Will. IV, c. 45, s. 33.

contained ; but that no such person shall be so registered in any year, unless he shall, on the last day of July in such year, be qualified in such manner as would entitle him then to vote, if such day were the day of election, and this Act had not been passed, nor unless, where he shall be a burgess or freeman, or freeman and liveryman, of any city or borough, he shall have resided for six calendar months next previous to the last day of July in such year, within such city or borough, or within seven statute miles where the poll for such city or borough shall heretofore have been taken : Provided always, that no person who shall have been admitted a Burgess or Freeman since the 1st March, 1831, otherwise than in respect of birth or servitude, or who shall hereafter be admitted a Burgess or Freeman, otherwise than in respect of birth or servitude, shall be entitled to vote as such in any such election, or to be so registered as aforesaid : Provided also, that no person shall be so entitled as a Burgess or Freeman in respect of birth, unless his right shall be originally derived from or through some person who was a burgess or freeman, or entitled to be admitted a burgess or freeman, previously to the 1st of March, 1831, or from or through some person who, since that time, shall have become, or shall thereafter become, a burgess or freeman in respect of servitude.*

The enfranchising clause of the statute declared as follows :—

That in every city or borough which shall return a member or members to serve in any future Parliament, every male person of full age, and not subject to any legal incapacity, who shall occupy within such city or borough, as owner or tenant, any house, warehouse, counting-house, shop, or other building, either separately, or jointly with

* 2 Will. IV, c. 45, s. 32.

any land within such city, borough, or place occupied therewith by him as owner, or occupied therewith by him as tenant under the same landlord, of the clear yearly value of not less than ten pounds, shall, if duly registered according to the provisions hereinafter contained, be entitled to vote in the election of a member or members to serve in any future Parliament: Provided always, that no such person shall be so registered in any year, unless he shall have occupied such premises as aforesaid for twelve calendar months next previous to the last day of July in such year, nor unless such person shall have been rated, in respect of such premises, to all rates for the relief of the poor made during the time of such his occupation so required as aforesaid, nor unless such person shall have paid, on or before the 20th July in such year, all the poor's rates and assessed taxes which shall have become payable from him in respect of such premises previously to the 6th April then next preceding: Provided also, that no such person shall be so registered in any year, unless he shall have resided for six calendar months next previous to the last day of July in such year, within the city or borough in respect of which he shall be entitled to vote, or within seven statute miles thereof, or of any part thereof.*

Contemplating these provisions, if the sentiments before expressed in reference to the civic franchise, were called forth by its state and prospect at the period when they were penned, of how much more importance are they now, when the statute of William the Fourth, after sweeping from the roll of electors for the representation of the city in Par-

* 2 Will. IV, c. 45, s. 27.

liament seven thousand citizens of the Livery, opened the same franchise to the minimum point of qualification that had prevailed in the Wards under the Act of the 11th Geo. I, without, however, the same restraint from subdivisional tenancy, without the same conditional scot and lot liabilities that might constitute them even "citizens of the leets," or the same indispensable acquisition of the city freedom. On the contrary, the statute of William IV, prospectively discouraging all special institutions as monopolous, created a constructive burgage right in the "occupier of any house, warehouse, counting-house, shop, workshop, stable, shed or other tenement, of the value of ten pounds a year"*—all such occupants being constituted householders for the purpose of the said Act, and entitled to send to Parliament representatives for the city of London, although they may be neither liverymen, freemen, nor inhabitants of the same, and, consequently, not subject to the appurtenant liabilities in respect thereof, further than a merely nominal or even assumed rating to the poor's tax! Further, as arising out of the decision of revising barristers in the registration courts, where these several cir-

* Reform Circular, Nov. 9, 1830.

cumstances of qualification have been logically expounded, claimants have been instructed that—

Premises confer the franchise if of ten pounds annual *value*, although less be paid, or that they may be rated at less ; or *that the rent be paid weekly*. [So that every occupant of a lodging at four shillings per week rent, is a qualified elector for citizens to serve in Parliament for the city of London.]

A house includes premises having an outward door, or separate entrance; or apartments, where the landlord does not sleep on the premises. [So that premises subdivided into the greatest possible number of apartments, and let or of the value as aforesaid, will give so many votes.]

A warehouse, counting-house, shop or other building, although a lodging, gives a vote. Lodgers who use a part of their premises (even an attic, kitchen, or cellar) as a shop, workshop, warehouse, store-room, or counting-house, or who have a separate entrance, or *control of an outer door*; or who occupy a separate building; or where the landlord does not sleep on the premises, are also qualified electors.

Landlords who occupy a sufficient part, viz. of the value of ten pounds per annum, are also so entitled.

Servants, &c., are also entitled to vote, *if a qualification be deducted from their wages or salaries as rent, &c.*

Actual rating to the poor-tax is not necessary, if a *claim to be rated* has been duly made; nor is the poor-rate necessary to have been paid, if omitted to be demanded previous to the 6th April.

Registration shilling is not necessary to have been paid.

Window-tax is not necessary to have been paid, nor is assessment thereto required for the purposes of the Act.

Residence is not necessary to the qualification of the four shillings per week lodger, if he have occasionally slept in his said apartment.

In disqualifications personal, the following have been declared cases excepted from the "legal incapacity" contemplated by the Act, viz.—

Bankrupts, insolvents, &c., if still in possession of the premises ;

Aliens naturalized or denizenized ; if father, grandfather, &c. shall have been English ; or if claimant shall have served in the army, navy, whale-fishery, &c. ;

Officer of excise, customs, stamps, post-office, assessed taxes, police, &c.—if claimant shall have ceased to hold office for twelve months ;

Convictions, if the claimant shall have suffered the punishment of the law for the offence ;

Pauper from certain funds—if relief have not been received within a year.*

As the powers of the authorized registrars under this Act, nor the form of claim therein prescribed, nor the oath enjoined, require any specification of the city freedom, as a necessary qualification of the "householder" thereby constituted, the number and quality of such electors for the city of London seem to be limited only by the number of occupants of any "garret," "cellar," "stable," "shed," or other tenement, at four shillings per week valued rent, that shall be permitted so to become therein qualified householders for the purposes of the Act; and inasmuch as the citizens of London "have nothing to live upon but their industry and franchise, upon

* Sunday Times, Aug. 1, 1841.

which franchise the said city was founded,"* the preservation of the same, and of its legitimate representation in Parliament, seem to rest with the Wardmote Inquest Juries, and to their strict presentment of every such householder in trade who shall not be of the city freedom. It remains alone with the Wardmote Inquest Juries, to consider the great importance of preserving to the trading city of London, and it is yet in their power to preserve, so far as the constructive householders shall be occupants in trade, an electoral body, circumstanced and circumscribed in accordance with the conditions of its special existence as an incorporated mercantile gild,—and to neutralize so violent an infraction of every principle of its incorporated being, by making a careful and exact presentment (according to their oath†) of every non-freeman carrying on trade within its limits—not only of handy-craft occupations, but also, in accordance with the terms of the city charters, of the “trade of merchandizing.”‡ This done, and

* Petition of the Citizens of London to K. Edward III, *ant.*, p. lxxiii.

† Vide App. XX.

‡ See Articles of the Wardmote, p. 200. The first charter of Charles I. recites, that whereas divers persons carry on trade from the port of London to other ports, and enjoy many of the privileges of freemen without un-

not till then, will they have accomplished their duty : and unless the city Chamberlain be instructed as rigidly to follow up such presentments by his compulsory authority, to enforce the civic freedom upon the strangers who may find inducement in carrying on trade within its limits,—at no distant period the prognostication of Mr. Norton will have become so far accomplished, as that the city mace may, without impropriety, be transferred to the Police Commissioner, and the annual pageant of its citizens abolished, having become as marrowless in its pride as its famed prototype of the Adriatic.

dergoing the incidental charges and burdens : it therefore declares and ordains that such persons *residing in the city of London, or within ten miles of it*, “ shall not be permitted at any time henceforth, *by themselves or by others*, directly or indirectly, to transport any goods, wares, or merchandizes, by way of merchandizing, in any way from the port of the said city of London to ports foreign or beyond the seas :” *enjoining all societies of merchants, by whatever name known* (and naming most of them), that they permit not nor license such persons to trade or traffic, *until they are certified by the Chamberlain to have become free citizens*. Given at Westminster, the 18th Oct., an. reg. 14 (1638).

THE METHOD
AND
RULE OF PROCEEDING
UPON ALL
ELECTIONS, POLLS AND SCRUTINIES,
AT
COMMON HALLS & WARDMOTES,
WITHIN THE
CITY OF LONDON.
BY SIR WILLIAM MILD MAY, BART.
WITH
ADDITIONAL NOTES
ON THE
ELECTORAL FRANCHISE OF THE WARDS.

[THE AUTHOR'S DEDICATION.]

TO THE RIGHT WORSHIPFUL

RICHARD HOARE, Esq.

Alderman of the City of London.



SIR,

I TAKE the liberty of introducing the following Treatise to the Public under the sanction of your Name, as it was begun at your request, and finished by your assistance,—in order that the experience you gained at the several Elections in which you have been concerned, might be of general service to your fellow-citizens upon the like occasions : and since this was your immediate and only view, I hope the observations I have made, and the principles by which they are explained, will answer the end of so generous a design. Your merit in every other circumstance is so well known, as to render it unnecessary for me to offer any particular testimony, either of your integrity and zeal to serve the community as a Magistrate, or of your good sense, good-nature, and every amiable quality for which you are so universally beloved in private life. But I must not, however, omit acknowledging the peculiar happiness I have enjoyed, in the continuance of a long and intimate acquaintance, by the means of which I have been a witness of such frequent proofs of your real worth in every instance, that I must always esteem it an honor to be accounted, what I now sincerely profess myself,

Your obliged Friend,

And most obedient Servant,

WILLIAM MILDMAI.

THE
METHOD AND RULE OF PROCEEDING
UPON ALL
ELECTIONS, &c.
WITHIN THE CITY OF LONDON.



THERE is no privilege of which the Citizens of London have more reason to boast, than that of choosing their own magistrates and officers, constituted to support their civil government. The method and time in which such elections must be made, and the right, in general, of voting in such a choice, are all prescribed by the bye-laws and customs of the City, and regulated by the Act of 11th of Geo. I, chap. 18. So that nothing more seems to be required of a person presiding at any contest of this kind, than that he should, according to good conscience and the best of his understanding, determine the votes of his fellow-citizens in the manner directed by their

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own laws, under the regulations and agreeable to the construction of that statute.

But although it is thus in general described to whom the right of voting shall belong, yet the particular distinctions upon the previous duties necessary to complete that right are no ways settled, or at least do not appear to be universally agreed upon: this possibly may be accounted for, by *every presiding officer claiming a liberty of putting his own construction upon each separate qualification*, either as he is inclined to adhere to the strict letter of the law, or follow the more liberal principles of equity. The different opinions that hence have been formed upon points which so frequently come under consideration, and the contests which people have been tempted to raise by reason of those points being so unsettled, are circumstances greatly lamented by all who regard the ease and quiet of their fellow-citizens. Upon this consideration, I was apprized that it would not be an unacceptable offer, to propose some uniform method of proceeding, and rule of judging, upon the several elections within the City of London. To execute this in a manner satisfactory to all parties, which, if possible to be done, is my only aim, I have been obliged to look back into the ancient usage

and custom of the City, with respect to the choice of all the public officers; I have duly examined the statute before mentioned, of the late King, which was chiefly intended to regulate these elections; and have directed myself by the opinions of the most eminent counsel, upon the construction of its several clauses, and of all other Acts of Parliament any ways relating thereto; I have, moreover, been assisted throughout the Work by the Gentleman to whom it is dedicated, and, together with him, consulted great numbers of worthy citizens, of known abilities and integrity, who, perfectly understanding their own constitution, and having been themselves personally concerned in disputes of this nature, have afforded me such intelligence from their own experience, as ought, above any other, to be the most relied upon: the result of all which I here make bold to publish, with hopes that it may be of use to the magistrates, freemen, liverymen, and householders of this great city; having formed my judgment in every instance free from all party views, and without prejudice in favour of any kind of opinions, but such as may tend to the most impartial, just, and equitable determination; and such surely ought all determinations to be upon disputes amongst fellow-citizens,

concerning that valuable right of voting in the choice of their own officers.

It would be too tedious and unnecessary, in this place, to enter into an historical detail of all the alterations which have been made in the qualifications of the freemen, to vote at the different elections within the City; let it suffice to observe, that these rights have been varied by their own implied consent, under the authority of the bye-laws passed in Common-Council, which were intended and ought to conclude all the members of the community; for although the royal charters confirming the privileges of elections, were granted generally unto all the barons* of the city of London, as the citizens were anciently styled,

* [Few subjects of doubt have had a greater diversity of explanation from etymologists, than the term *baron*; and while laudatory writers have inferred, from an indiscriminated adoption, that the ancient burghers or citizens of London had been invested with a species of general order of nobility—others, again, taking it as a primitive word of simple import, have treated it as of no distinctive rank, beyond that of created man, and consequently neither peculiar nor exclusively honorable to any. The former opinion seems to have germinated from a miscomprehension of *Matthew Paris*,—and the latter, as derived from the Francic, *bar*, *baro*, a man. In the restrained sense of *dominus*, however, the term was more in keeping with the view of the conservatives. As applied to citizens of London, in reference to the City charters, the subject will be found treated elsewhere.—*Vide Index, art. Baron.*] ED.

yet, when the metropolis grew so populated that it became inconvenient, and almost impracticable, to carry on these elections, and the other business of the corporation, by the general assembly of the freemen, they, by their own petition and assent, as appears by an ordinance passed so long ago as in the seventh year of King Richard II,* devolved the power to a select number, nominated to be their Common Council, chosen at first, and still continued to be chosen, by the free-

* The preamble to this ordinance recites, that it was passed in the presence of the Lord Mayor, Aldermen, and an immense community of the honest men of the City, &c. "who by the underwritten petitions deliberating, &c., That, forasmuch as by complaint made how divers times in the councils used within the hall and chambers of the Guildhalde, great rumour and peril had been perceived, as well by great assemblies, as insufficient persons deputed, and seeing that oftentimes the judgments of the said councils were more by clamour than reason, &c. Thereupon it was ordained by the Mayor, Aldermen, and good Commons, that every year the Aldermen be charged to assemble their Wards, to choose four of the most sufficient persons that be in their Ward, to be of the Common Council, &c." [The learned Author here seems to have retraced his subject only so far as to arrive at an erroneous conclusion, in supposing the assembly referred to superseded, by their Act then passed, the general voice of the freemen as previously in operation, either as a matter of convenience or otherwise. No "historical detail" is "too tedious or unnecessary," that shall establish a fact or avoid an error of such magnitude.—*Vide Introd., p. cccix.*] ED.

men inhabitants, as representatives of all the citizens, with power to make bye-laws, which bye-laws must of course bind all the citizens, whom the Common Council so represent, even in instances where, for the sake of avoiding popular disorder and confusion, they have ordained that such and such particular officers shall be chosen by a selected number, and not by the community in general.*

Accordingly, we may find it agreed by an Act of Common Council, passed in the fifteenth year of Edw. IV, that none but the Master, Wardens, and honest men of the several mysteries of the City, shall go to the Guildhall, to the election of Lord Mayor, Sheriffs, and other officers of the City;† and

* This was solemnly determined by the opinion and resolutions of all the Judges, met at Serjeant's Inn, in Michaelmas Term, 40th and 41st of Queen Elizabeth. See *Coke's Reports*, 1, 4, p. 77, entitled, *The Case of the Corporations*.

† [The election by the Liverymen was of earlier institution. At a Common Council in 1467, 7th Edw. IV, it was agreed that the election of Mayor and Sheriff should be made only by the Common Council, the Master and Wardens of every Mystery of the City *coming in their liveries*, and other honest men, for that purpose specially summoned (*Lib. L*, 59). The Act of Common Council referred to in the text, further extended the franchise to the whole body of the Livery.—*Lib. L*, 119; *Introd.*, p. cccxxvi.] ED.

several other ordinances of a later date, here referred to,* have limited the right of voting for the principal officers, at the respective Wardmotes, to such freemen only who are householders within the Ward;† all which are now confirmed by the Act of Parliament of the 11th Geo. I, chap. 18: by which it is enacted, “that none shall poll for Mayor, Sheriffs, and other officers to be chosen at the Common Hall, but those who shall swear, or affirm, that they are freemen and liverymen,” and “that the right of voting for Aldermen and Common Councilmen, in the several Wards of the City, shall belong and appertain only to such freemen as are householders, paying scot and bearing lot, as thereafter is mentioned and required.” Thus we perceive the right of election still remains in the freemen of the City, but under such restrictions and additional qualifications as have been

* See the Acts of Common Council. October 26, 1692; Sir Thomas Stampe, Mayor.—September 20, 1711; Sir Gilbert Heathcote, Mayor.—December 6, 1712; Sir Richard Hoare, Mayor.—April 15, 1714; Sir Samuel Stanier, Mayor.

- † [As the Ward franchise originated in a burgage right, the restriction would have been more properly stated, as to such householders who are freemen, &c. The limitation yet only extends to the election of officers not strictly officers of the Leet.] Ed.

thought requisite for the avoiding of all tumultuous proceedings: these qualifications, therefore, as we now find them, we should endeavour to settle and establish in such a manner, as may prevent all further and future disturbances ; for it is through the want of a proper explanation, that the laws of election within the City, like the unhappy fate of many other laws, are perverted to the mischievous purposes which they were intended to destroy—and frequent controversies are created by the very regulations, which were designed to put an end to all disputes.

As to the contentions which, upon these occasions, will necessarily arise between parties of different interests, they must be left to cool and subside, as the particular reasons which created them may in time be forgotten, or other circumstances happen, which may reunite those who, at such a season, appear in opposition to one another ; and, since the candidates must be supposed to recommend themselves only by their known characters and public sentiments, it is to be wished no attempts may ever be made to seduce, by other motives, such of the voters as are likely first to engage themselves through principle and natural inclination ; I hope, in the last place, it is unnecessary for me to add a general caution to

every presiding officer, to keep himself clear from all party and personal prejudice,—to remain, if possible, unacquainted with the merits of either side, until they are proved in open Court, and not to seem concerned in the event, any further than having a regard to his own character, by making a just and impartial decision.

It is well known that the Sheriffs of London are the presiding Judges at the Common Halls, to which the liverymen are summoned for the choice of Members of Parliament, and of Mayor, Sheriffs, Chamberlain, Bridge-Masters, and all other officers there chosen for the City ; and that, at a Wardmote held for the election of an Alderman, the Lord Mayor, or his *locum tenens*, is the presiding officer ; and that every Alderman, or his deputy, presides, by virtue of the Lord Mayor's precept, in his respective Ward, upon the choice of Common Councilmen, and other ward or precinct officers: and, since nothing can contribute better to the right settling of these elections, than a calm and regular proceeding therein, it will be proper first to point out in what manner they ought to be proposed—how carried on—and within what time finished ; and then I shall venture to lay down the rules and principles, collected from the best autho-

rities, by which he who presides may form his judgment in making his final declaration.

Those who have a right to vote, being summoned and met at the time and place of election, and proclamation being made in the usual form, the presiding officer is to proceed to take the names of the candidates, to put the question distinctly upon each, and to make his declaration of the choice, as it shall appear,—first, upon holding up of hands—in the next place, upon the poll—and, lastly, upon the scrutiny of the votes objected to. These are the three usual methods of trial, if required, before an election can be determined within the city of London; which, however, must be supposed to be but one election, made at first upon the holding up of hands—the poll and scrutiny only suspending the determination, until it appear who, at last, have the majority of legal votes; and it must be observed, that the method and time in which an election poll, and scrutiny must be carried on and finished at a Common Hall and at a Wardmote, as also the legal qualifications of voting at each, are differently circumscribed, and must accordingly be distinctly considered.

I shall therefore beg leave, first, to consider of the elections made at the Common Hall, as this is the largest assembly of the City, com-

posed of all the liverymen, summoned to choose their principal officers.

Frequent dissensions have indeed formerly happened in adjusting the rights of these popular elections; wherein there have been instances of the freemen in general setting up their ancient claim to vote in the choice of their City officers, in opposition to the sole privilege, which had, as before mentioned, been vested in the liverymen; and the liverymen, in their turn, have opposed the Common Council, in the power which that yet more selected number assumed, to excuse any person from serving an office to which he had been elected by the Common Hall; and, at other times, the commonalty have entered into higher controversies with their chief magistrate, in respect of the right formerly claimed by the Lord Mayor, to name one of the Sheriffs of the City for each year, without any choice or concurrence by the livery. These jealousies and disputes, we happily find, have been by degrees settled, and the separate powers of each body confirmed, under the sanction of several Acts of Common Council, by which all the community, as I observed before, must be concluded; and it is now established by custom, as well as law, that the Common Hall shall consist only of liverymen, occasionally to be summoned for the nomina-

tion of two Aldermen, who have served the office of Sheriff, to be the Lord Mayor, one of which is afterwards to be chosen by the Court of Aldermen.* And that the liverymen themselves shall elect both the Sheriffs, either out of the Court of Aldermen, or the body of the citizens, as they shall think most proper,† reserving to the Lord Mayor the privilege of nominating a particular number of commoners, who, unless they have been before excused by the Court of Aldermen, must be put up to be either elected or refused by the Common Hall:‡ and, lastly, it is the liverymen

* The ancient right of the Court of Aldermen, to choose the Lord Mayor out of two persons, who were to be nominated only by the Common Hall, appears by an ordinance passed the 31st of July, the 7th of Richard II, whereby it is enacted, that those who shall be summoned to the election of a Mayor, should make their election of two, &c.; and, when they shall have agreed, they and their Common Serjeant shall present their names unto the Mayor and Aldermen, *as anciently was done* (*Lib. H, fol. 178*). And in the same year, at a General Council, held on Friday next before the Purification, &c., it was ordained that, from henceforth, none should be Mayor of the City before he should serve the office of Sheriff.—*Lib. H, fol. 197*. [*Vide Introd., p. cccix.*]

† See the Act of Common Council, July 20, 1631, Ducey, Mayor; and the amendment made to it by another Act, of June 25, 1694, Ashurst, Mayor.

‡ As formerly the Mayor named one Sheriff, and the Liverymen chose the other, the present method here des-

only who have the right of choosing the members to sit in Parliament,* the Chamberlain, Bridge-Masters, Auditors of Chamberlain's and Bridge-Masters' accounts, and other officers of the City.†

I have already taken notice, that the Sheriffs are to preside at all these elections made by the liverymen summoned to the Common Hall, which assemblies are to be held for the choice of a Lord Mayor on Michaelmas-day,‡

cribed was, by way of compromise, agreed to by the Act of Common Council, October 22, 1703; Sir Samuel Dashwood, Mayor. [*Vide* p. 216.]

* [The exclusive right of the Liverymen to elect Citizens to serve in Parliament, has been infringed by the 2nd Will. IV, cap. 45 (commonly called the Reform Act), which admitted as voters—1, Occupiers for twelve months, as owners or tenants of any "house, warehouse, counting-house, shop or other building," of the clear yearly value of not less than £10.; such occupier being rated to the Poor-rate, and being duly registered (*sect.* 27): 2, Joint Occupants,—as many as the clear yearly value of the premises jointly occupied, when divided by the number of such occupiers, will give a sum of not less than £10. to each (*sect.* 29). Moreover, the rights of the Liverymen are further curtailed, by limiting the franchise to those only who shall reside within seven miles of the city of London.—*Sect.* 32; *vide* *Introd.*, p. cccclxxxi.] ED.

† So settled with respect to the choice of Chamberlain, Bridge-Masters, &c., by the Act of Common Council, June 21, 7th of William III, Sir Thomas Lane, Mayor.

‡ Act of Common Council, 28th of Henry VIII, 1537; Alleyne, Mayor.

or the day before,* if it happen on a Sunday; and for the election of Sheriffs,† Chamberlain,‡ Bridge-Master, &c., on Midsummer-day, or the morrow after,§ when that falls on a Sunday; but should a Lord Mayor happen to die within the year, his place must be *immediately* || supplied, because the very name of the Corporation, under the title of Mayor and Commonalty, and Citizens of the City of London, must be supported by the existence of such a chief head or magistrate.

Thus, also, the election of a new Sheriff, upon the like accident of the death of either of them, must be made as soon after as possible;¶

* Act of Common Council, 16th of September, 1696; Pilkington, Mayor.

† Act of Common Council, 20th of July, 7th of Car. I, 1631; Ducey, Mayor.

‡ Act of Common Council, 1st of August, 28th of Eliz., 1586; Dixe, Mayor.

§ Act of C. Council, 15th June, 1694; Ashurst, Mayor.

|| Humphrey Parsons, esq., died in his second Mayoralty, on Saturday the 21st of March, 1740, and a Common Hall was summoned by an order of the Court of Aldermen, to meet on the Monday next following, for the election of a new Lord Mayor; when Daniel Lambert, esq. was chosen.—Sir Robert Godschall died in his Mayoralty, on Saturday the 26th of June, 1742, and a Common Hall was by the like authority summoned, and met on the Monday following, and chose George Heathcote, esq., in his room. [In 1752, Thomas Winterbotham, esq., died in his Mayoralty, on the 4th of June.] ED.

¶ It is provided by the Act of Common Council, 7th of

for although they, as officers of the City, appear in separate capacities at Guildhall, and the duty and attendance of one may excuse the duty and attendance of the other, yet, in Middlesex, they are esteemed in the eye of the law to be jointly together only as one Sheriff, and therefore the office in that county is not complete without their joint authority; so, likewise, every vacancy in all the other offices of the city ought to be supplied within such time, as may prevent any inconvenience by the delay of public business; and to this purpose it is provided by an Act of Common Council, passed the 27th Nov., 1729, Brocas, Mayor, that a Common Hall shall be summoned within fourteen days next after the demise of any Chamberlain, for the electing of another fit and able person to supply such vacancy.

Sudden emergencies of this kind may possibly sometimes occasion such contests and disorders, as shall for awhile suspend the new election, which, however, cannot now any ways affect the charter or general franchise of the City, since this Corporation, under the sanction of the statute of the 2nd of William

Car. I, Ducey, Mayor,—That if, upon the death of any Sheriff during his Shrievalty, or upon any other occasion whatever, there be just cause to make a new election, the same shall be at such time and day as by the Lord Mayor and Court of Aldermen shall be appointed.

and Mary, chap. viii, sect. 3,* is ever to remain without any seizure or fore-judger of the said franchise, for any pretence of forfeiture or misdemeanour hereafter to be committed.

Upon all these vacancies, happen when they will, the Liverymen in general, who live in the city or the suburbs and out-parts, or wheresoever diffused and dispersed throughout the kingdom,† have a right to assemble and give their votes for a new choice at the Guildhall of London, pursuant to the summons publicly notified for that purpose.

This summons has always been issued by a precept from the Lord Mayor, who, as he convened the Court, so he likewise formerly claimed a right to adjourn or dissolve it whenever he pleased, although the Sheriffs were allowed to preside over the intermediate proceedings; from whence many disputes and disturbances were created, either by an unnecessary adjournment by the Lord Mayor, or the continuance of the assembly by the Sheriffs, after such an adjournment.‡

* [An Act for reversing the judgment in a *Que Warranto*, against the city of London; and for restoring the same to its ancient rights and privileges.] ED.

† [Except, as before noticed, in respect of the election of citizens to serve in Parliament; *antè*, p. 13, n. †] ED.

‡ See the arguments upon this point, at the trial of the information against Thos. Pilkington and Samuel Shute,

Whereupon, an Act of Common Council was passed on the 21st of June, in the seventh year of King William III, Sir Thomas Lane, Mayor, for settling the methods of calling, adjourning, and dissolving the Common Halls, upon the several elections of the city officers therein mentioned ; which Act, taking notice in the preamble of the disputes concerning

esqrs., sheriffs of the City, and others, for a riot in 1683, 35th of Car. II.—*State Trials*, v. iii, fo. 541. [This trial arose out of the endeavour of the Lord Mayor, Sir John Moore, to re-establish the ancient custom of nominating a Sheriff by drinking to him, in the person of Mr. (afterwards Sir Dudley) North, an eminent merchant, and member of the Turkey Company. The other candidate was one Box—the latter for election, the former for confirmation ; and to them were opposed Papillon and Dubois, put up by the opposing section of the Livery, or “the Floor.” At the day of election, June 24, 1682, “the floor” refused to confirm the nominee of the Mayor, and, after fruitless endeavours at pacification, the latter adjourned the Hall—when “the faction,” disputing the power of the Mayor in that respect, held on the Corporation assembly, or Common Hall, and proceeded with the election, by setting up a poll. “The faction,” defendants on the trial, were Thos. Pilkington, esq., Sam. Shute, esq., sheriffs ; Henry Cornish, Ald. ; Ford, Lord Grey of Werk ; Sir Tho. Player, knt., chamberlain of London ; Slingsby Bethell, esq. ; Francis Jenks ; John Deagle ; Richard Freeman ; Richard Goodenough ; Robert Key ; John Wickham ; Samuel Swinock ; John Jekyll, senior. Roger North gives a long narrative of the contest, of which the trial was the denouement—and is prefixed thereto in Cobbett’s *Collection of State Trials*, v. ix, fol. 187 ; 8vo, 1811.] Ed.

such rights and powers to call and adjourn, &c., declares, "That, for the preventing the like mischiefs for the future, the right of assembling Common Halls for the election of Lord Mayors, Sheriffs, and other public officers for the City" (out of which their Members of Parliament are to be excepted, as mentioned hereafter); "and the power to dissolve the same after such elections are made and finished, and not otherwise, is and ought to be in the Lord Mayor of the City for the time being."

Upon which we must remark that, in the first instance, there is no power in the Lord Mayor, but that of assembling and then dissolving the Court after such elections are made and finished.

The next clause of the Act, therefore, has ordained, "That whenever any poll or scrutiny shall be demanded, or other difficulty arise which may require an adjournment, that then the right of granting and taking the poll and scrutiny, and adjourning the Hall from time to time, till the same be concluded, shall be in the Sheriffs."

But since from hence it may happen, as the next proviso takes notice, that the two Sheriffs, thus invested with a joint authority, may have disputes and differences touching any matter relating to the adjournments, polls, or scrutinies, which might impede the complet-

ing of them within the times limited, then and in such case the Act directs, "That all such differences shall be determined by the Lord Mayor, and whatever orders he makes therein shall be observed by the Sheriffs; or, in default of their compliance, he may proceed himself in granting and taking the poll and scrutiny, and in adjourning the Hall until all shall be finally concluded."

Agreeably to this establishment, it is now the custom, at all these Common Halls, for the Lord Mayor to appear upon the hustings, attended by the Aldermen, together with the two Sheriffs, and proclamation being made by the Common Cryer for all persons to draw near and attend their summons, the Recorder and Common Serjeant thereupon usually address themselves to the Livery, and open the business and intent of the meeting; after which his Lordship retires with the Aldermen, and leaves the management of the intermediate proceedings to the Sheriffs; and accordingly, upon the candidates being proposed, it is they who declare upon the question; and, if a poll be demanded, it is they who appoint the clerks to take it; and upon the result, after a scrutiny made, which is also submitted to their judgment, it is they who make the declaration of the majority unto the Lord

Mayor, who, returning back, certifies the election to the Common Hall by the Recorder; and then the Court is dissolved by his order.

But there is one exception, as before mentioned, to the contrary of this, with respect to the election of the representatives of the City to sit in Parliament, who seem not to be included in the general description of the above statute, as public city officers—but are chosen at a Common Hall, met by virtue of a notice from the Sheriffs, in pursuance of the writ directed to them, in which case the Sheriffs only are concerned in the return, and have an exclusive power given and specified by other statutes* to convene the voters—to preside at the poll—to adjourn from time to time—and to make the final declaration: they, therefore, are solely the masters of all these proceedings, and the Lord Mayor has no authority of interposing.

I thought it proper to premise all this, because magistrates and presiding officers cannot be guilty of a more fatal error, than either disputing the settled jurisdiction of others, or assuming greater powers to themselves than

* See 7th and 8th of William III, chap. 25, and 1st of George I, chap. 18. [Subject also, as to the election of citizens to serve in Parliament, to the control and limitation of the 2nd Will. IV, cap. 45.] Ed.

what are admitted by the laws of the land, or the constitution of their own Corporation.

Upon proceeding to the election of a Lord Mayor, all the Aldermen under the chair, who have served the office of Sheriff, are proposed in rotation, two of whom are to be returned by the Common Hall to the Court of Aldermen; and it has been the usual custom of the Liverymen to nominate the two senior Aldermen under the chair, and the Court of Aldermen, upon the like example, have usually elected the senior of those two into the office; but that each of them have a right to deviate from this usual method of rotation, is what no one can dispute—the only question is, how far the exercise of that right may be justified, when it is not founded on such motives as have a real tendency to the greater dignity and better government of the community in general.

In like manner, upon the election of Sheriffs, all the Aldermen who have not served that office are first put up, in their order of seniority; but by whatever laws these might have formerly claimed the priority of being so elected,* yet it is certain the liverymen at

* There is a memorandum in the Journal Book for the year 1556, 3rd and 4th of Philip and Mary, of an Act of Common Council, said to have been passed on the 1st of August, setting forth that it was thereby agreed, "That no

present are at liberty to choose whom they think proper, either out of that Court, or of those nominated by the Lord Mayor, that have not been excused—or any others that shall be proposed at the time of election: this, indeed, is the true and proper freedom of election, which the Livery reserve to themselves upon this, as well as that other occasion of electing Members to sit in Parliament,* although the compliment is then also paid to the Court of Aldermen, to put up each of their names before any other candidates are

Alderman should serve the office of Sheriff, without his own free will and consent, before his ancients and seniors," &c.; but the authority of this is to be questioned, as there is no record to be found, in the Town Clerk's office, of its ever having been engrossed; however, if such a law had been made, it must be understood now as repealed, by the general clause of the subsequent Act of 20th July, 7th of Car. I.—Ducey, Mayor: and as there is a clause in this last-mentioned Act, "That the Lord Mayor should not choose any commoner into the office of Sheriff, so long as there should then be an Alderman eligible to the said office," the same is expressly repealed by the Act of Common Council, 25th June, 1694, Ashurst, Mayor; as also by the Act of 1703, Sir Samuel Dashwood, Mayor, by which the power of the Lord Mayor to choose any person Sheriff is taken away from him, and vested solely in the Liverymen.—*Vide p. 216.*

* [In the latter particular, the "reservation" no longer exists—the exclusive rights of the Livery having been neutralized by the 2nd Will. IV, c. 45, as stated, *ant*?, p. 13; *Introd.*, p. cccclxxxi.] *Ed.*

offered. Such of the city officers as are annually chosen, are seldom opposed after the first election, but are continued from year to year, excepting only the Auditors of the Chamberlain's and Bridge Masters' accounts, until a vacancy happens by death or resignation.

The questions upon all these elections are proposed by the voice of the Common Cryer, and a declaration is thereupon made in the first instance by the order of the Sheriffs, according to their judgment upon the appearance of hands held up for each candidate.

But, if this declaration upon the view of hands be not satisfactory to the parties against whom it is made, they have a right to demand a poll, which is the next and most certain method of determining the choice ; to this purpose, the 4th section of the 11th Geo. I, chap. 18, hath directed, " That upon all elections of citizens to serve in Parliament, and of Mayors, Sheriffs, and all and every other officer to be chosen for the City by the Liverymen thereof, in case a poll be demanded by any of the candidates, or any two or more of the electors, the presiding officers shall begin the same on the day it is demanded, or the day following at farthest, unless that happen on a Sunday, and then the next day after : " and since the preamble of this section declares the same to be enacted, to the intent

that the poll at all elections within the City may be expeditiously taken, so it must be the duty of every presiding officer to be ready immediately to proceed thereon ; and, therefore, the postponing and adjourning of it to the next day after, ought only to be allowed upon the joint request of the contending parties on both sides.*

The Common Hall being accordingly continued or adjourned to the time agreed upon, the Sheriffs, attended by their Secondaries, usually appoint such clerks as are in equal numbers recommended on the behalf of each of the candidates, to take the poll, whom they swear truly and indifferently to take the same, in the manner as directed by the Act; that is,†

* [By the 2nd Will. IV, cap. 45, it is enacted, in the election of Citizens to serve in Parliament, that only two successive days be allowed for polling—to commence on the day fixed for the election, or on the day next following, or at the latest on the third day, unless any of the said days shall be Saturday or Sunday,—in which case, the first polling day shall be the Monday following. The polling on both days must be closed by four o'clock in the afternoon, and is to continue the first day for seven, and the second day for eight hours (*sec.* 67). But it is further declared, “That nothing in this Act contained shall prevent any Sheriff or other returning officer, or his lawful deputy, from closing the poll previous to the expiration of the time fixed by this Act, in any case where the same might have been lawfully closed before the passing of this Act,” &c.—*Sect.* 70.] *ED.*

† *Sect.* 1.

That they shall set down the name of each voter, and his place of residence or abode, and for whom he shall poll; and to poll no person who shall not be sworn, or, being a Quaker, shall not affirm the purport of the oath therein prescribed; and accordingly every person before he be admitted to poll, must swear or affirm, "That he is a freeman of London and a liveryman of the company of _____, and has been so for the space of twelve calendar months, and that the place of his abode is at _____ in _____ and that he hath not polled at that election."

And to this must be added, if required by any of the candidates or two of the electors, the oaths of allegiance, supremacy, and abjuration, which oaths the presiding officers or their clerks are empowered to administer, or upon their refusal or neglect, to forfeit the sum of sixty pounds, with costs of suit.*

It being thus directed by this statute, "That no person shall poll at such elections, but those who shall swear or affirm, that they are both freemen and liverymen," it amounts to

* Sect. II. [By the 10th of Geo. IV. cap. 7, entitled "An Act for the relief of His Majesty's Roman Catholic Subjects," the Oaths required by the Corporation and Test Acts are modified in their behalf, as in the said Act is specified. Sec. I.] Ed.

the same as if there had been an express enacting clause, that the right of voting at such elections, should be limited to those only who are freemen and liverymen; since it is immediately afterwards declared, that the vote and poll of every person who shall refuse to take the said oath, or affirm the effect thereof, shall be null and void, and as such rejected and disallowed.

In this manner the poll is to be proceeded upon from day to day, until it be finished, and which, upon all elections at a Common-Hall must be finished within seven days, exclusive of sundays, after its commencement.*

But here again, with respect to the elections of the representatives of the City, the Sheriffs ought to be apprized of what is further required and directed by several other acts of Parliament relating to the duty of all returning officers; particularly that,† so soon as the writ for such election is delivered to them, or either of them, the date of the day on which it was received should be endorsed on the back, and which at the very next Court of Hustings, after its receipt, they must open and cause to be read, and immediately after take and subscribe the oath directed by sect. 3.

* Sect. 1 V. [See note p. 24.]

† See 7th & 8th of Will. III. chap. 25.

of the 2nd of George II. chap. 24. by which they are to swear, "That they have not received any sums of money, office, place, or employment, for making any return, &c. And that they will return such persons as shall, to the best of their judgments, appear to have the majority of legal votes," which oath the Lord Mayor, or, in case he be a candidate, the senior Alderman usually administers; and then it is they, the Sheriffs, and not the Lord Mayor, who give public notice of the time and place of election, to be proceeded upon within eight days after; at which appointed time they are obliged, if requested by either of the candidates, or two of the electors, to administer the oath of qualification to any of the candidates, according to the 9th of Queen Anne, chap. 5. sect. 5. which extends to London, as well as to all other corporate towns in England, not there excepted, which oath, if taken, must be certified into Chancery or the King's Bench within three months after; or, if refused, the election and return of such candidate will be void. And every voter, also, at such election, if it be demanded as above, must, before he polls, take the oath directed by the first section of the above-mentioned statute of the 2nd of George II. purporting, "That he hath not by himself or any other

person taken any sum of money, office, place, or employment, in order to give his vote." I believe I need not enlarge any further upon this particular branch of the Sheriffs' duty, which, as it is only to be occasionally attended to, they, who may happen to preside on such an occasion, may refer to the several acts of Parliament, from whence I have transcribed the foregoing directions, as also to what may hereafter be enacted by the same authority, as the best and surest guides for their behaviour.

For the more due and orderly carrying on of every election at the Common-Halls, the statute of the 11th of George I. has further directed, that, upon the adjournment of the poll on each day, the presiding officers shall seal up the poll-books with the seals, and in the presence of such respective candidates, or persons deputed by them, as shall desire the same; which books are not to be opened again, but in their presence, and at the time and place of meeting in pursuance of the adjournment.

Upon finishing the poll, the books must again be sealed up, and within two days after, publicly opened at the place of election, and the numbers for each candidate duly and truly cast up; which numbers, the presiding offi-

cers, within two days after such casting up, must publicly declare to the electors at the place of election.*

But it must be observed, that, though the statute prescribes these several days as the longest time allowed for taking the poll, yet the candidates, if they think fit, may, with the consent of the presiding officers, agree to close it in less time; as that the books shall be shut up at the end of the third or fourth day, or upon such an hour of the day; in which case it will be necessary for them who preside, to take great precaution in their own justification, and procure an agreement in writing signed by the candidates, or two of their voters on each side, at what hour the poll shall begin and end on each day, and when the same shall be finally concluded; after which, if either of them should decline and desire the poll might be closed even sooner than first agreed upon, yet it ought not to be complied with, unless all the parties on both sides consent in the same formal

* Sect. 4. See Appendix, No. II. [By 2 Will. IV. c. 45, as to the election of Citizens to serve in Parliament, the poll books are to be cast up and the numbers declared on the day following the close of the poll (unless it be Sunday, in which case on Monday) by 2 o'Clock in the afternoon at the latest; but the returning officer may, if he think proper, declare the final state of the poll immediately on the close thereof. Sect. 68.] Ed.

manner to countermand and to give up their former agreement; and so likewise, though the presiding officers may claim the indulgence of the two days allowed them afterwards to make their declaration, yet they may and usually do, make it immediately, upon casting up the numbers, at the time agreed upon to shut up the books; unless they be desired to suspend the same by any of the candidates, who, upon the view of a scrutiny to be demanded, may want an opportunity to prepare and nominate a sufficient number of their friends to be their scrutineers; and this seems to be the reason of granting so much time to the presiding officers, even after casting up, before they shall be obliged to make their declaration of the numbers.

The poll, being thus closed, doth not yet we find determine the election, but the parties may from hence proceed to the ultimate trial, by a scrutiny upon the legality of the several votes; and here the presiding officers are not only to observe the method and time in which such scrutiny must be carried on, but are at last to exercise a judicial authority in allowing or disallowing the right of the several pollers against whom objections are to be made.

A scrutiny, if lawfully demanded, that is, by any of the candidates, or two of the elec-

tors, must be granted and proceeded upon, and the candidates on each side must nominate to the presiding officer any number of persons qualified to vote, not exceeding six, to be their scrutineers, whom they are then immediately to nominate, upon the supposition of their being prepared so to do, by the allowance of the time for deferring the declaration upon the poll as above mentioned for that purpose.*

This demand of a scrutiny is generally made, or at least must be granted as if made, upon the mutual request of both sides, that he who has gained upon the poll may have equal liberty to object against the others, as well as defend his own voters; and, since both parties must be supposed to enter jointly upon the scrutiny, so consequently they ought jointly to bear all the expense of the proceeding thereon; accordingly, upon their joint charge and request, the presiding officers are directed to deliver unto each of them, within six days after their demand of a scrutiny, true

* Sect. 4. See Appendix, No. III. [By the 2nd Will. IV. cap. 45, it is declared that no Scrutiny shall thereafter be allowed by or before any returning officer with regard to any Votes given or tendered at any election of a Member or Members to serve in any future Parliament. (Sect. 58.) But the correctness of the Register of Voters may be questioned before a Committee of the House of Commons. Sect. 60.] Ed.

copies signed by themselves of the poll taken. These ought to be presented unto all the candidates at one and the same time, that they may have equal opportunity to find out whom to object against, and what objections they may make or prove. And, since all and every of the scrutinies at these elections must begin within ten days after such delivery of the copies of the poll, the Common-Hall must be adjourned to that tenth day from the time on which the scrutiny is demanded ; and the examination of the merits must then be proceeded upon from day to day (sundays excepted), and be finished within fifteen days after the commencement of the same ; and, within four days after, the Sheriffs must publicly declare at the place of such election, which of the candidates is or are duly elected, and the number of legal votes for each, appearing to them upon such scrutiny.

From hence it appears, that, in computing the several periods of time in which each act is to be done, the proceedings upon these elections by the liverymen may take up, including all the Sundays, nearly fifty days from the first demand of a poll, to the last final declaration.

In this calculation there is one circumstance I must beg leave to take notice of, which is the repugnancy there seems to be between the

fixed time appointed for the admission of a Lord Mayor, and the yet longer time beyond that, which is allowed for his being elected into the office; for the citizens of London, in pursuance of their charters,* “are to choose unto themselves a Mayor every year, at the end of which he is to be amoved, and another substituted in his room, or he may be retained, &c.” And to this purpose the act of Common-Council, which has been before referred to, of the 28th of Henry VIII. Alleyne, Mayor, directs, that the liverymen should thenceforth be summoned to the Common-Hall, on Michaelmas-Day, to return two fit and able persons to the court of Aldermen, one of whom is there to be chosen, who on the feast of St. Simon and Jude, being the 28th of October following, is to enter upon his office, just as the year of the former Magistrate is ended; but, if, upon the election of two to be returned by the liverymen on Michaelmas Day, a poll and scrutiny should be demanded, it may not be determined, according to the time allowed by act of Parliament, until some time after the expiration of the day on which the office is to become vacant; for, from Michaelmas to St. Simon

* Fourth charter of King John, and second charter of Henry III.

and Jude, is but twenty-nine days, whereas the scrutiny may be spun out to nearly fifty days, so as to reach to the middle of November before it is determined which two are returned: during which interval, there will not be, strictly speaking, any Lord Mayor presiding over the City.* Be this as it will, the Sheriffs must pursue the directions of the statute, and as the scrutiny only suspends the right of those nominated on the poll, until it clearly appears which two are returned by the Livery, so the person chosen upon that return by the Court of Aldermen must be supposed, as if returned and chosen on the first day, previous to the expiration of the office of the former Magistrate; consequently this doth not come under any of the provisoes of the

* [By the 24th Geo. II. cap. 48, entitled "An act for the abbreviation of Michaelmas Term," it is provided that after Michaelmas, 1752, the presenting and swearing the Mayor of the City of London, before the king or queen in their Court of Exchequer, shall be observed on the 9th day of November, in every year, unless it be sunday and in that case on the morrow after. And by the 25th Geo. II. cap. 30, being "An act to amend an act for regulating the commencement of the year and for correcting the kalendar now in use," provision is made for the admission and swearing of the Lord Mayor of London, at the Guildhall, on the 8th day of November, "being the day next preceding the day when the solemnity of presenting and swearing the said Mayor in the Court of Exchequer is appointed for the future to be kept and observed."] Ed.

11th of George I. chap. 4. as if no election were made, and there were a necessity to re-assemble or apply to the court of King's Bench for a mandamus to proceed to another choice: on the contrary, an election being at first made, and the decision of it only suspended, the necessity of the case must admit, that during such interval, the father of the City* should preside, or rather, that the former chief magistrate should hold over, not as in his own right, but in right of him who shall appear at last to have been duly elected.

The Sheriffs are not only to be thus careful to carry on all their proceedings within the due time, but must attend to a yet much greater concern in the exercise of their judicial authority; for the candidates and scrutineers, being now met again in the Common-Hall in pursuance of the adjournment, are to suggest their objections *vivâ voce*, as the names of the voters are called over in the court, and which are usually digested in an alphabetical order for that purpose, and called over alternately on the side of each candidate; and the Sheriffs are to take notice, that it is

* [The father of the city, or of the Corporation, is the senior Alderman, appointed by Act of Common Council, 20th Sept. 1711, to the Ward of Bridge Without,—a nominal jurisdiction embracing the whole of the borough of Southwark.] Ed.

expressly ordered by the act of Common-Council of December 6, 1712, Sir Richard Hoare, Mayor, "That, at all such elections of Mayor, Sheriffs, Chamberlain, and other officers of the City, they, the Sheriffs" (to whom this act declares the right of granting and taking the poll and scrutiny at such elections doth properly belong), "shall, upon full hearing the objections against any person voting, and the answer made thereto, or before they make their return, openly and publicly declare in the place where the scrutiny shall be made, whether the person so objected against, hath a right and is well entitled according to the laws and customs of the City, to vote at such election, or not, that so the candidates contesting may know which of the electors are allowed, and which of them are not allowed in the said election."

Here I hope to be pardoned for presuming to advise all those who may sit as presiding judges on such disputes, at any election whatever within the City of London, to behave with caution, attention, and deliberation, to hear both sides with equal patience, and not demean the character they appear in by any unbecoming expressions, or a warmth of zeal arising from any preconceived opinion, or from the prejudice of party, personal friendship, or any other private motive; but to de-

termine every point according to equity and conscience, and the rules hereafter submitted upon the merits and circumstances of the case, as they shall be proved in open Court : on the other hand, it must be recommended to the candidates and scrutineers to behave with submission and due deference, to state their objections in as concise a manner as possible, considering how short a time is allowed for the determination, and to submit each point as it shall turn out upon the evidence ; for they should not be suffered by any means to hang and dwell upon their arguments for the purpose only of protracting the scrutiny, and giving less opportunity for the other side to propose and make out their objections.

In order therefore to point out the objections, and settle the right opinions, which ought to be formed upon all contests of this nature, I beg leave first to offer the reason and principles on which the right of voting is to be considered, and then to add, by way of further explanation, the several particular cases on which any doubts may arise, with the determination they ought to receive ; supposing that, whilst an objection is stated on each circumstance, the voter is qualified in every other respect.

In proceeding upon this method, we must take notice, that the first qualification to be disputed on these scrutinies is, whether the voter, according to the oath administered, is a freeman and a liveryman, and was so twelve calendar months next before the election ; which annexed condition, as to time, must be construed to refer back only to the last antecedent of having been a liveryman for so long a time ; because the fourteenth section, which is the enacting clause of the statute with regard to this qualification, takes no notice of the freedom, but declares only, "That no person shall have a title to vote, who has not been upon the livery for twelve months before ;" and therefore if he, who has been upon the livery of any company for a year, takes up his freedom of the City at any time before the commencement of the election by holding up of hands, it is sufficient ;*

* [This position must be looked upon as an anomaly which could not exist under the original constitution or the present practice of the civic institutions, and appears to be merely an imaginary suggestion, or a possibility that might arise out of a case which had occurred shortly previous to the text being written, as hereafter stated. The Act of Parliament taken "in spirit and in truth" will hardly warrant the interpretation given to it—particularly when opposed by the "usages and customs" of the city in that particular.

The franchises of the City of London are progressive.

time of such voters being upon the livery must be twelve months complete from the date of

As a general qualification for any and all, it is required to be of the commonalty or freemen ; those who possess the property qualification required, are represented in the city parliament, by their election of the Aldermen and Common-Councilmen of the several Wards. The franchise of election of representatives in the Imperial Parliament is limited to those of the freemen or commonalty who are also liverymen of the Chartered Companies or "Mysteries." Hence the latter is the completing act which constitutes a citizen and an elector at the Common Hall, not only by virtue of the confirmation by the act of 11th Geo. I. but by previous custom, which had existed (with interruptions) from the time of king Edward the Third.

It must therefore be a tortuous construction that would subvert the constitutional routine, and imagine the primary act to be last accomplished, for the purpose of taking advantage of a supposed and apparent omission in legislation. But supposed and apparent only can it be ; for surely he would hardly be free from the taint of wilful perjury, who should make a reservation, by "referring back only to the last antecedent," and under the circumstances laid down for him, should swear, in the words of the act "that he was a Freeman of London and a Liveryman of the Company of _____, and had been so for the space of twelve calendar months."

Taking into consideration the great disorders that were to be adjusted, and the violence of the contending parties, the legislature adopted a principle admitted in all enactments touching the franchise of election, that, (as a preventive of corrupt influence) the right should not be acquired by any immediate act—by purchase or otherwise, but to accrue in consequence of an act previously done, at some distant time. In the present case, it is required that the *completing act* of the franchise should have been acquired twelve months before the day of election.] Ed.

his being entered in the Company's books to the time of the election made as above; for, if the twelve months are not ended on or before the first declaration, it will be a proper objection against his right of afterwards voting on the poll: for the calculation of the year must have reference only to the day in which the first election and declaration was made on the view of hands; and therefore, although his oath may be true, that at the time of polling he had then been a liveryman for twelve months complete, yet his vote must be disallowed upon stating the case in the following manner:—

A—was admitted upon his livery the 25th of June, and the election for Sheriffs was on the 24th of the same month, being Midsummer-Day in the year following, but, a poll being demanded, he did not vote until the 26th, at which time his year was complete.

BAD.*

As the evidence of one having been upon the livery for so long a space of time depends upon a matter of record, the proof may at

* So determined upon the election for Chamberlain-Bosworth against Selwin.

once appear by recourse had to the date of the entry in the books of the Company to which he belongs, and this proof is the more easily made out, by reason that, by the sixth clause of the same act of Parliament of the 11th George I. "The Lord Mayor, upon the request of the candidates, or their agents, is obliged, where a scrutiny is demanded on such elections, to issue out his precepts, requiring the masters and wardens of the respective livery companies to cause their clerks forthwith to return two lists of all their liverymen, which the clerks are bound to do, in three days' time, upon oath, and the same are then to be delivered to the candidates or their agents on each side."

Here then is a necessary caution to be given to those who at any time may transfer themselves over from one company to another: that they be careful, after having obtained from the Court of Aldermen their license to be translated, to complete that translation, by applying to the Chamberlain's office to have it endorsed on the copy, and afterwards entered and recorded in his books; for, if they should vote in their last capacity, to which they were ordered to be translated, before the proper record is made thereof, it will annul their right, as though no vote at all had been given; for example, if J. S. formerly a cooper, having

gained his license to be transferred over to the Vintners' Company, should vote in this latter capacity, without being completed, by having his name entered as above; the objection will be, that there is no such person as J. S. Vintner; and upon such objection being made, it will be too late to show, that his name appears as a liveryman in the books of the former Company; because every man's right must abide by the test of that qualification upon which he tendered his vote, and was admitted: this therefore will be a right objection when stated as followeth:—

A—, although he has been a liveryman for more than twelve months in one Company, yet polled in the name of another, to which by consent of the Court of Aldermen and the two Companies he was to have been translated; but it doth not appear by the proper record, that such translation was carried into execution.

BAD.*

In the next place, it is further enacted by the fourteenth section of the said statute of George I.—“That neither shall any persons have a title to vote, who shall not have paid

* So determined upon the election for Chamberlain. Bosworth against Selwin.

their livery fines, or who, having paid the same shall receive all or part of them back again, or shall have had any allowance in respect thereof.”*

This objection seems founded on good reason and policy, especially as the fines to be admitted on the livery of most of the companies are kept up at a high price, estimated by the particular advantages that are to be obtained, and amongst the rest this general privilege of being entitled to a vote at the Common-Hall of the City; to which it is proper none should be entitled, but such as are of sufficient abilities to pay the purchase, and consequently more likely to exercise it in a free and independent manner. But to admit a person upon the livery gratis, and by the way as it were of charity, is making the privilege too mean and cheap; besides, if this were allowed, it is possible, that some might petition to be admitted with no other view than to serve the purpose of an election: to prevent therefore any abuse, or other means of evading the intent of this clause of the statute, it is cautiously provided “That the receiving the fine or part of it back again, or even any allowance in respect thereof,” is in every instance, in which it can be proved,

* See Appendix, No. IV.

equally and alike the same disqualification, as the non-payment thereof.

It is usual however for some companies to accept of a promissory note for the fine, upon which, as I have been informed they seldom allow more than six months' credit; if therefore it can be proved, that the voter, who must have been twelve months upon the livery, has refused or been unable to satisfy his note upon a demand made at the time, or since it became due, he ought to be set aside for such refusal and omission equally as if he had been first admitted without payment, or any security given; consequently then, if on the other hand a satisfaction has been given on such a demand any time before the election, it must be allowed as equal to a payment upon the first admission; but, if the company, instead of making such a demand, have cancelled the note and forgiven the debt, it ought surely to be construed to create the same disqualification, as the receiving back the fine, or an allowance in respect thereof: the chief doubt therefore that may be raised upon this circumstance is, where the note still remains uncanceled and unsatisfied, and at the same time there is no proof of a demand made for the payment, nor any presumption of a refusal, whenever it shall be demanded; in

which case I should apprehend we ought to yield all reasonable indulgence in favour of the right, and allow such a security given, as equivalent to the sum itself, since it must be supposed, when no evidence is given to the contrary, that the party has been all along, and still is willing and able to make good his engagement, by which at least he now appears as a person bound to pay his admission fine, and for which the company can by law enforce and obtain a satisfaction: all these circumstances, therefore, upon a fair and reasonable construction, may be determined in the following manner:—

A— was admitted on the livery, but on account of his low circumstances was excused the usual payment of a fine, or part thereof.

BAD.

B— paid his fine upon admission, but afterwards coming to decay, received the whole or part of it back again; or some allowance has been made him on account thereof.

BAD.

C— did not make an actual payment of the fine due upon his first admission to the

livery, but gave his promissory note for the same, payable at a future day, which he has accordingly paid and satisfied before the day of election.

GOOD.

D— gave his note, but, the payment thereof being demanded at the time it became due, he refused and has not yet satisfied.

BAD.

E— gave his note, which the company afterwards, in consideration of his circumstances, forgave and cancelled.

BAD.

F— gave a note, which is now unsatisfied, no demand having hitherto been made, but he remains still liable and willing to make good the payment.

GOOD.

I must beg the liberty now to take notice of one objection, so far only as to show that the presiding officers ought not to take any cognizance of it, since it is such as must of course be determined by a legal process; for, as several of the companies and mysteries within the City of London are limited by

their grants and charters to admit only a particular number upon their livery, so it has been urged by way of a general objection, that those who have been admitted upon the livery of any company, after the numbers so prescribed by their charters were complete, ought all to be set aside; now if we were to consider this, even upon its merits, how hard would it be for any one, who, after being admitted upon a valuable consideration, should be thus personally affected by a circumstance to which he must be supposed to be an entire stranger! How impossible almost must it be, when the limited number may be exceeded by the admission of many at one and the same time, to decide and distinguish which of them are to be disqualified as supernumary; but a presiding officer upon a scrutiny is happily discharged from entering into these difficult inquiries, for he has no right to determine whether any companies have exceeded their numbers, nor any authority to compel them to produce their charters in order to convict themselves; but, on the contrary, is solely bound by the evidence which is directed to be given by the 6th section of the statute made for regulating these elections, which I have recited before.* and whereby it

* See page 40.

is required that the clerks of the several companies shall return true lists of their liverymen upon oath; it must therefore be taken for granted that the lists, so returned upon oath, do contain a true account of all the liverymen of their respective companies, and upon this presumption the presiding officers must proceed to inquire, not how many ought to have been returned, but whether those, who are returned, are properly qualified by the performance of the subsequent duties required in order to entitle them to vote at such election.

In going on therefore to examine these further qualifications, I must in this place just observe, that a liveryman, in order to be entitled to a vote at a Wardmote, in the choice of an Alderman, &c. must be a freeman and householder within the ward, paying scot and bearing lot, as I shall have occasion by and by to explain more particularly; but here it is not requisite, that even the liverymen who reside in London should be householders, and liable to the rates that are to be levied therein; nor is it necessary that those, who are householders and liable to be rated, should therefore have been charged or have paid to all or some, and particularly to the watch and and lamp: for, although a deficiency in any

of these points, as must hereafter be distinguished, will prove fatal objections at a Wardmote, upon the election of Alderman and Common-Council Men, yet no such objections are to be made at a Common-Hall, nor can the right and vote of a liveryman be any ways impeached thereby.

But notwithstanding, a liveryman, even though he is a householder within the City, may be exempt from the above objections, yet all such, (I mean those who are householders within the City,) are subject to another, which may be urged against them in particular; and that is, the objection which by the 14th section of the same statute (the 11th of George I.) may be made at all elections within the City, against those "Who have within two years next before requested to be, and have been accordingly discharged from paying to the rates and taxes which the citizens of London, inhabiting therein, are liable unto;" but, though this be an objection to be made at all elections, yet, by the strictness of the words, it must be confined and limited to be urged at a Common-Hall, against such of the liverymen only as are *householders, within the City, and so liable to the rates and assessments raised within the jurisdiction thereof, as being citizens of Lon-*

D

don and inhabitants therein; for the disqualification reaches no further than to those who request to be discharged from such rates as the citizens of London inhabiting therein are liable unto; a request therefore made by a liveryman living elsewhere to be discharged from any tax to which he is liable, by being an inhabitant of that other district, ought not to be urged against him, as he does not come under the express description of this disqualifying clause; it may perhaps be deemed a hardship to the liverymen householders within the City to be thus liable to an objection from which those who live out of this jurisdiction are exempted;* but, however we must

* [This position, although strictly consistent with the terms of the act, is yet one not contemplated at the time it was passed. The object of the statute was to raise the franchise to a property qualification,—to induce the mercantile and extensive trading interests (*merchants in gross*) to take part in the city government by repealing certain objectionable conditions annexed to the freedom; and to exclude from the franchise of election all those who were in such a state of poverty as were likely to become the tools of others by bribery or corrupt influence. With this view, as to the election of Citizens to serve in Parliament, it restored the exclusive right of the liverymen, who had long been termed *proborum homines*, and were looked upon as a selected and substantial body of the freemen; still however preserving a test in strictly exacting the payment of their livery fines, (*see page 41.*) In respect of the internal representation, it again had in view a property

be guided upon this point by the general principle, that every disabling clause in a penal Act of Parliament, ought to be construed in the strictest sense, and not carried any further than what the plain and express import of the words will warrant and direct ; the objections therefore upon this head must be thus confined and distinguished :

A— being a liveryman and householder within the City, hath, within two years next before the election, requested to be, and hath accordingly been discharged from paying to all, or some of the rates, which he, as a citizen of London and inhabiting therein, was liable unto.

BAD.

B— is a liveryman, living out of the jurisdiction of the City, and hath been dis-

qualification, by re-establishing the elective franchise exclusively in freemen in Scot and Lot, which had long been a matter disputed with the *inhabitants*, from the time of their recognition under the protectorate.

No other effect than that of making a simple matter complicated, is obtained by dividing the 14th section, as in the text, into two parts, when the whole so particularly and exclusively applies, 1st to freemen householders (liverymen or non-liverymen) who pray relief from their contribution to *Scot* ; and 2nd, such as, in still greater necessity, have received alms.] Ed.

D 2

charged, upon his request, from paying all, or some of the rates, to which he was liable in that district, whereof he was an inhabitant.

GOOD.

And, lastly, there is one objection which extends to all liverymen and other persons whatsoever, voting at any election within the City, and that is, "For having had and received, within two years next before the election, any alms whatsoever:" upon the proof of which circumstance the vote of every person is to be declared null and void, according to the latter part of the fourteenth section of the above-mentioned statute ; so that, upon whatever foundation, public or private, or wheresoever a charity is received in town or country, it must be determined a general disqualification. This, however, is a circumstance which ought to be treated in the most careful manner, and allowed only upon proof that the person charged with receiving the charity, received it in the way of alms, and upon the very terms so granted as a charity; there are many distinctions therefore necessary to be made upon this point, and, since they must all be equally taken into consideration upon every other election within the

City, I shall beg leave to offer my observations upon the whole, when this objection is again taken notice of, upon explaining the methods of settling the several Wardmote elections for Alderman and Common-Council Men.

This is to be my next attempt, and upon entering on the subject, I find I shall be obliged to state many more particular questions, and to enforce many longer arguments toward bringing the contests upon these elections to a right and peaceable conclusion, as the oppositions therein happen to be more frequent, as well as more difficult to be decided.

The election of all Ward officers must be at a Court of Wardmote, held in the nature of a Court-Leet, by a precept of the Lord Mayor, as chief Lord and Steward, summoning, or directing the Alderman to summon the inhabitants to attend at the place and time appointed for that purpose.*

* [By using so loose an expression as *inhabitant* in reference to the franchise of election, Sir W. Mildmay has by inadvertence probably, adopted the error which originated the long continued controversies and dissensions that were sought to be set at rest by the statute under exposition; and at a period when the minds of men had by no means become reconciled to the "New Constitution," appears rather, like the prince of Denmark, "still harping on my

Any citizen may be chosen an Alderman of a Ward, although he be not an Inhabitant thereof; for the several acts of Common-Council* with respect to these magistrates, require only that they should be able and sufficient citizens and freemen; if the candidate therefore be free of the City and of sufficient abilities, these are all the qualifications that are directly prescribed to entitle him to the right of being chosen into that high office, in any Ward where there is a vacancy, not-

daughter," than upholding the law which was to restore peace and harmony to this long disturbed city.] Ed.

* See page 7, where all these acts of Common-Council are referred to. Formerly the Alderman was inhabitant of the place, and resident where chosen; and if he removed he was incapable of the government of the place, and might be disfranchised, (4 *Mod. Rep.* 38.) The magisterial jurisdiction of the Aldermen originally was local. By the statute of Labourers, 19 Hen. VII. it was enacted that "also the Maior and Aldermen of the City of London, that is to say, *every alderman within his Ward*, and the Maior throughout the whole Citty, shal haue like power and auctority to examine, correct and punish the sayd offenders, &c." In the year 1674, the Commons thought it a hardship that the Aldermen mostly lived out of the town, and they would have passed a law with severe penalties upon such of the Aldermen as should continue their residence out of the city. On the 13th November, the Aldermen exercised their afterward disputed power of *negating* by *their* majority the acts of the Court, and by the Recorder declared their dissent to any such measure. A Committee however was appointed upon the subject, and *there* the matter ended. *Jor. Hooker, No 48. fo. 90-122*] Ed.

withstanding he may live in another part, or even out of the walls of the City.

But it is expressly directed, that every Common-Council Man shall be an inhabitant of the Ward for which he serves, agreeably to the ancient ordinance of the 7th of Richard II. before-mentioned, by which a selected Common-Council was first established, and whereby it was agreed, "That the Aldermen should every year assemble their Wards, and, by good deliberation, cause them to choose four of the most sufficient persons that are in their Wards, to be of their Common-Council;" which number has since at several times been augmented in each precinct, in proportion to the increase of its inhabitants; and many resolutions have thereupon been made in Common-Council to remove particular persons from thence, for not being inhabitants of the Ward, for which they were elected; and at length a general act was passed June 14, 1716, Sir Charles Peers, Mayor, whereby it is declared, "That no person shall be capable of being elected a Common-Council Man of a Ward, who at the time of election is not a *householder* therein."* In pursuance of all

* [It has been observed that a very large proportion of our disputes arise from the inconsiderate employment of expressions by no means synonymous. It will readily be

which, the Lord Mayor gives it annually in charge to every Alderman, "That he do cause such a fixed number of the most sufficient, honest, and discreet men of his said Ward, to be for the said Ward of the Common-Council, for the year ensuing."

As the Common-Council was originally constituted out of the body of the freemen assembled in Common-Hall, and as the Common-Hall is now to consist of liverymen, as well as freemen, it must be esteemed as pro-

observed that an inhabitant is not necessarily a householder, for he may be a lodger; neither is a householder necessarily an inhabitant; and by the stat. 11 Geo. I. c. 28, the distinction is drawn by disfranchising the *inhabitants* who were not *householders* and *enfranchising householders who could not be inhabitants*; and hence was the compound term *inhabitant-householder* employed to describe a person who embodied in himself both those positions. Simple habitation is nothing beyond a *pot-wolloping* or Chartist qualification; whereas in the City of London, Scot and Lot, as a consequence of being a householder rateable thereto, had always been (except when occasionally broken down by temporary innovation) a *sine qua non* of citizenship. In the constitution granted to the City in the 9th Edw. II. (1316), the ninth article defined who were to be considered Citizens for the purpose of elections, in the following terms: That all and every one being in the liberty of the said City, that would enjoy their liberties and free customs, *be in Scot and Lot, and partake of all burdens for maintaining the state of the City*, according to the Oath they have taken when they were admitted into their freedom: And whoso will not to lose his freedom.

per at least, that the Common-Council Men should also be freemen and liverymen, as well as inhabitants of the City; since they not only pass laws which must bind all the rest, but frequently control the proceedings of the liverymen, and do many acts under the notion and authority of their being a selected part of the Common-Hall; but this I only mention with respect to its propriety, for it is nowhere absolutely ordered, that the inhabitants should

In the 44 Eliz. a question was propounded in the Court of Exchequer, whether a Citizen who had not a family [was not a housekeeper] *and did not pay Scot and Lot*, but sojourned in another house [another's house—a lodger] should have the benefit of the King's Charter? It was decided in the negative, upon the principle that not being a contributor to the state of the city he could not claim the benefit of its privileges.

Following up its own principle, the 11th Geo. I. before cited, declares that householders rated to Scot and Lot *as inhabitants* shall have the franchise. At an election for alderman for Broad-street Ward in 1718, sundry questions were propounded; and among others it was decided that whatever *householder* has been scotted, and hath paid his Scot, and hath been called to his Lot, and hath borne it, or is bearing it, he is *ipso facto*, entered and enrolled among the able and sufficient *housekeepers*, and that by their own free judgment and choice; he is by them pronounced to be *Homo idoneus, probus et legalis homo*, a fit and able person, and may properly be called a contributor and auxiliar to the state of the city; he is in *Scotto et Lotto* and entitled to the privilege thereupon. It becomes now interesting to enquire, 1st, Whether citizens competent

be thus qualified, in order to be chosen into the Common-Council.*

The time settled for the choice of the annual Ward precinct officers is on St. Thomas's Day, or the morrow after, if it happen on a

to the franchise are not also qualified to be elected by that franchise: if indeed an answer has not been anticipated by the observation, that both representatives and represented, are required to be Scot and Lot men (*Norton's Com.*) And 2nd, Whether the Act of the Common Council (June 14, 1716) was not framed with that view, and in the same spirit of polity which a few years later took effect in the Act of Parliament for regulating City elections.] Ed.

* That the Common-Council Men were in former times usually chosen out of the liverymen inhabitants, seems implied by the latter part of the ordinance of the 7th of Richard II. whereby it is provided, "That the Mayor, for the time being, shall not receive throughout the town, of any mystery, for the Common-Council, more than eight persons of a mystery, although it happen that more than eight of one mystery be presented and chosen." And further we may observe, that anciently all persons of the same crafts and mysteries used to live together, in the principal streets and districts of the Wards, out of which it may be presumed the Common-Council were chosen; and even to this time several of the Wards retain the names of the companies or guilds that resided therein, as Cordwainers, Candlewick, Vintry, and Cornhill. [The city records will shew that the Common-Council were elected from the Liverymen, or those Citizens who were free of the Twelve Companies or Mysteries, at an earlier date than is here assigned to it, for in 1361, 25 Edw. III. a precept was sent by the Mayor to the Companies requiring them to assem-

Sunday;* and the election of a new Alderman must be within four days next after the death or resignation of the former; which was prudently limited to be made within so short a time, by the Act of Common-Council here referred to,† in order to prevent any increase of expense, or the continuance of tumults, which to frequently happen upon these occasions.

The Court of Wardmote being opened by the presiding officer, the candidates may be either nominated by any of the electors, or propose themselves; but it is customary for the inhabitants of the several precincts in each Ward, to meet every year, some time before St. Thomas's day, in order to return a list of such persons they think best qualified to serve their respective offices; which persons, so returned by their precinct meetings, are of course put first in nomination at the Wardmote, in the order as the precincts are ranged; after whom any other candidates

ble their good people, and to cause four to be chosen, to consult with the Aldermen and Sheriffs, on the business of the City. *Lib. F. 206.*] Ed.

* By Act of Common-Council, September 28, 9th of Henry VIII. Exmew, Mayor.

† By Act of Common-Council, August 9, 1710—Sir Samuel Gerrard, Mayor.

may be then added to either of the precincts, in opposition to all or any of those who are so returned.*

But, although the Common-Council Men are thus divided and distinguished within their Wards, as belonging to particular precincts, yet with respect to the City, they are elected and must be declared to be elected as officers and representatives of the Ward in general; and therefore, that the Alderman may proceed without confusion in such elections, it will be best to propose the candidates returned by every precinct, separate by themselves, and to add at the same time the names

* The immediate superintendence of the precincts appears formerly to have been the business of the Deputy; but whatever was the practice upon this portion of the right of election, considerable incongruity now prevails, which it might be well to remedy, in the nomination of representatives by the precincts to the Wardmote. Some precincts do not nominate any; and others nominate any number. The division of the City into Wards for Municipal purposes, and the ecclesiastical division into Parishes, are totally disconnected both in purpose and principle, nor are the boundaries the same.—Each Ward consists of several parishes and *parts of parishes*; hence the Ward precincts are oftentimes in two or more parishes, and the parishes in two or more Wards; yet we find parish officers calling Meetings of Ward precincts not within the boundary of their parish, and such precinct meeting *voting parish money*, over which it cannot possibly have any legal control, for the expenses of the nomination.] Ed.

of any other proper persons, who shall be moved for and seconded ; and then, after putting the question on each of these persons, to declare that such and such so nominated or returned by the precinct aforesaid, are duly elected Common-Council Men of the Ward, and not Common-Council Men of such a precinct ; and so to go on and propose the questions, and make the declaration in like manner on those who are nominated or returned by the next and every other precinct ; however, even after this, so long as the Wardmote continues open, any other candidate may, if he please, oppose himself to all and every of the persons so before named and declared ; and if the majority of hands shall appear more in favour of him than of any other of the candidates, he must be deemed duly elected, and, being so elected, must serve as a Common-Council Man of the Ward in that particular precinct in which he who is set aside had been before nominated.

I must beg pardon for being yet a little further minute in observing, that, upon all these elections, where there is no opposition, the question ought to be proposed both for and against each name ; and, if the fewer number, or no hands are held up by any of the electors, when the question is put for their

contrary opinions, they thereby declare the choice or election for the affirmative ; but, if there be an opposition, so that two or more are named for an office into which one only is to be chosen, then it need only to be demanded, that all those who are for the first candidate named, should hold up their hands, and so the same to be proposed separately on each of the others, and, for whomsoever the majority of hands shall appear, must of course be declared duly elected.

If, upon this declaration first made on the view of hands, a poll be demanded, the presiding officer must grant the same, and proceed thereon in pursuance of the directions of the statute of the 11th of George I. chap. 18. on the very day, or next day after it is demanded, unless that be a Sunday, and appoint and swear in the clerks to take the same, and seal and open the books each day in the presence of the candidates, &c. in like manner as before described to be necessary at the Common-Hall elections.*

Every person, before he be admitted to poll, must swear, or being a Quaker must affirm, "That he is a freeman of London, and an householder in that Ward, and has not polled

* See page 28, and the Appendix, No. I. and No. II.

at that election " every voter therefore should be cautioned, that he be sure he is at least qualified so far as to be able to swear to those particulars, though there are many other qualifications not expressed in the oath ;* he ought I say to be apprised, that, if he be a freeman of a company only, he does not come up to what is so plainly required he ought to be, a freeman of London ; that, if he doth not absolutely *possess and occupy a house or part of a house within the Ward in his own right, so as to be rated thereto, he is no householder, according to the intent and meaning of the statute* ;† and lastly he should not inadvertently poll first at one book and then at

* [This explanation appears not only to embody a false argument, but is much calculated to mislead, and reduce the obligation of the oath to a mere colourable qualification, which upon a scrutiny would be rejected ; involving at the same time a moral if not a penal offence. The oath is and ought to be the representation and test of the whole qualification required for the purposes of the act : the term householder is to be understood as expounded by the act itself, and implies neither more nor less than its consequences, viz :—An occupancy of premises as shall necessitate and incur such a contribution and liability to Scot and Lot as is therein required.] Ed.

† [The reverse of the disqualification here laid down, is the exact position for the franchise, and coupled with the qualification by value of rental and amount of assessment, is also and must necessarily be, the true intent and meaning of the statute.] Ed.

another; for if in either of the above cases, he should be convicted of taking a false oath, or should he procure or suborn another to take the same, he will incur and suffer the the like penalties, forfeitures, and disabilities, as persons convicted of wilful and corrupt perjury at common law are liable unto.*

Whatever person shall at such elections refuse or neglect to take the above oath, or being a Quaker affirm the effect thereof, or shall refuse or neglect to take the oaths of allegiance, &c. (if required), his vote and poll is null and void; and the presiding officer, and his clerks, are empowered to administer all the said oaths, or, upon their neglect or refusal, they, for such offence, are to forfeit sixty pounds, &c.†

The poll, being thus opened and commenced in due time, must be proceeded upon from day to day, and finished within three days, exclusive of Sundays; and within two days after, the numbers are to be duly cast up at the place of election; and within two days after such casting up, the number of the votes or polls for each candidate are to be publicly declared; so that if the presiding officer will take up all the time which the statute thus allows, the poll at a Wardmote, and the de-

* [Sect. III.]

† [Sect. II.]

claration thereon, may possibly not be determined, until the end of seven days.*

But I must in this place again observe, that though the statute allows such a proportion, as the farthest time to which a poll may continue, yet upon agreement by the candidates, and consent of the presiding officer, it may be closed sooner ; nor is he, who presides, bound to defer his declaration, until two days after the books are cast up ; but may, if the numbers are known, immediately declare who have the majority ; but however in this he ought to pursue the same caution, as before recommended to the Sheriffs at the Common-Hall elections, and insist on the candidates, or two of the voters for each, signing such agreement in writing, at what hour on each day the poll shall be begun, and when the whole shall be ended ; from which he ought not on any account to deviate, unless the parties to such first agreement consent to renounce it, in the same formal manner under their hands.

And here again be pleased to take notice, that if upon the election of Common-Council Men, a poll should be demanded between several candidates put up for different precincts, the Alderman has no right to confine the opposition to the particular precincts ;

• [Sect. IV.]

but the poll must be opened and taken for their election as for officers of the Ward in general; and accordingly, which ever has the greatest number upon the whole, must be admitted and sworn, without regarding in what precinct, or against whom the particular opposition was first of all formed.

If the declaration upon the poll be not satisfactory, and a scrutiny thereupon is demanded, it must be granted jointly to both sides, as if mutually demanded in the manner as I suggested upon granting a scrutiny at the elections by the liverymen; and a number of the scrutineers, not exceeding six on each side, must also be nominated, to whom, at the joint costs and expense of the candidates, the presiding officer must, within six days after, deliver the copies of the poll books, signed by himself, and which it is incumbent on him to deliver unto all the candidates at one and the same time, that they may be equally prepared to start together in forming their objections against the respective voters.

The presiding officer having thus far executed his part, the candidates, or their scrutineers, within ten days next after the receipt of the copies of the poll, are to deliver to him the names in writing of the several persons against whose votes they object, with the

particular objections against each name ; and thereupon he again, within three days then next following, is to deliver unto each of them one or more copy or copies of the paper, containing such names and objections made on the other side, and, within ten days after, exclusive of Sundays, having fully heard both sides, touching their objections, he must publicly declare, at the place of election, the number of legal votes for each candidate, and which of them is or are duly elected.*

But, upon these elections, there are many particulars to be carefully observed in the necessary preparations before the parties come to an examination on the scrutiny, both as to the time in which the several steps are to be taken, as also to the form of drawing up and stating their several objections.

They who have been declared upon the poll will most likely be ready to take all advantages to frustrate the subsequent proceedings, and therefore it is an advisable caution for the other candidates, who think they have the merits upon scrutiny, not to run into any hazard of doubts, which may arise upon points of irregularity, relating to time, form, or any other nicety of law.

* See Appendix No. III.

The statute first directs, "That the scrutineers shall deliver in their objections to the presiding officer within ten days after the receipt of the copy of the poll books ; and that he shall within three day next after, deliver the copies of such objections to each of the candidates, and within ten days then next following (exclusive of Sundays), openly declare, which of the candidates are duly elected." From whence some queries have been raised, whether these words within so many days after the receipt, or delivery, &c. shall be so construed, as to include the days in which the acts are directed to be done, or whether the time is to be reckoned exclusive of those days : now the computation of time in law is in many instances various and unsettled, but, as to penal acts of Parliament, Courts of Justice have generally put the most favourable construction, so as to prevent the parties incurring a penalty, where there is any reasonable foundation of doubt ; and therefore as this, to the present purpose, is a penal statute, it is reasonable to yield the largest and most equitable allowance, and to exclude in the calculation the several days from whence the time is to be computed, by which means the parties may have longer opportunity to prepare their allegations, and avoid any irregularity in other matters.

The scrutineers then must take notice, that they are to deliver their objections within ten days after the day in which they received the copies of the poll, out of which Sunday not being excepted, if that should happen to be on the tenth day, the objections must be then presented.*

But suppose both parties exceed the farthest time wherein they ought to deliver their objections, does this set aside the scrutiny, and leave the election as it stood on the poll? Or, suppose one side proceed in the due period, and the other exceed their limits, can the presiding officer accept the objections that are tendered out of time, or must he refuse them, and stop all further proceedings, or proceed *ex parte* upon those which are duly presented? These are circumstances which have heretofore happened, and questions, as above, have thereupon been started, and much canvassed both in the City and at Westminster-Hall :† but here again the intent of the statute, which prescribes these rules and orders, must be our guide, which we find has inflicted a pecuniary

* So done upon the election for an Alderman in the Ward of Cheap, 1739. Sir Joseph Eyles against Richard Hoare, Esq.

† Easter Term, 1729. Upon motion for a mandamus to Sir Richard Brocas.

punishment on any person or persons who shall offend against what is therein directed, and the statute has expressly directed, that the objections shall be delivered within ten days after the receipt of the copies of the poll: if both parties therefore have exceeded the bounds, it must be deemed such an irregularity as may justify him who is to preside in refusing to accept their mutual objections; but, although he may in strictness of law be justified in such a refusal, yet it cannot be recommended as fair and equitable so to vacate all proceedings upon any slight neglect, whilst there is sufficient opportunity for both the parties to receive the copies, and go through their examinations and proofs; for, should the presiding officer thus drop the scrutiny, it would give the candidate, who had the majority on the poll, an advantage obtained by his own irregularity: however this discretionary power of going on with the proceedings is recommended only, when both the parties have only exceeded a day or two beyond the time, and that owing perhaps to their mutual agreement, or to inadvertence in not computing the intervening Sunday or Sundays in the account, which day as I before observed, is not excepted in this part of the act. But, if one of the candidates

should deliver in his objections on the tenth day, and none should be tendered by the other side, until the eleventh or twelfth, then there may be more reason for the chief Magistrate to reject these, which were not offered within the due time with the first. because the intent of the statute seems to be, that the objections on both sides should be presented within the time prescribed, in order that, as the presiding officer is within three days next after to deliver out copies thereof, both the parties might have equal opportunity to prepare their respective answers, and therefore it would be hard for him, who had pursued the directions of the act, to lose the benefit of his early application, by reason that the other candidate had not produced his objections, until a day or two after, by which means the scrutineers, who were first ready, must wait so much the longer before they could receive the copies of those objections which were last delivered: in this case therefore, as the delinquents ought rather to suffer, the other party have a right to insist, that cognizance be taken of such objections only as were regularly presented; but, notwithstanding the presiding officer may in this instance refuse the objections which came in too late, yet, if he think fit to receive them, and delivers out

copies thereof time enough for the other side to prepare their answers, before the day appointed for the hearing, the scrutiny must go on,* and the declaration made upon it will not be set aside on account of such irregularity; for supposing the acceptance of the objections to the prejudice of the other party, when so tendered too late, should be deemed even an offence against the statute, yet it is nowhere declared, that such offence shall make void the proceedings, and therefore the party aggrieved, being left to his remedy by a prosecution for the penalty, he who presides may enter upon the examination, and after hearing both the parties touching their objections, his declaration upon the close of the scrutiny, if just and equitable according to the merits, shall decide the election; but, if either of the parties should be so backward, as not to offer his objections time enough for the other side to receive copies thereof, and prepare their answers by the day fixed for entering upon the examination, then such objections are absolutely to be protested against, so that if they have been so long postponed by the candidate who had the inferior num-

* So agreed upon the contested election between Sir J. Eyles and Richard Hoare, Esq. for the office of Alderman in the Ward of Cheap, 1739.

ber upon the poll, the determination ought of course to go against him without further proceeding; or, if it be the neglect of the other, who, had the majority, he must now be content to be proceeded against *ex parte*, and, by being debarred from urging any contrary allegations, submit to the numbers he can save by his own defence. Lastly, should both the candidates be so very tardy as not to present their objections within the due time before the day appointed for the hearing, the presumption must be, that the scrutiny is given up, and the election must remain as it stood on the poll, without any further declaration.

On the other hand, the presiding officer is to observe, that, if either of the parties, instead of being too dilatory, should be so early in their application, as to offer their objections before the tenth day, he must accept them on whatever day they are so offered; for the statute does not express, that the objections shall be delivered precisely on the tenth day, but only within ten days next after the receipt of the copies of the poll.

But then the same clause directs, "That the presiding officer thereupon shall, within three days next following, give out to the other candidates or scrutineers one or more copies

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of the paper, containing such names and objections as aforesaid ;” now, although the objections may be accepted at any time within the ten days, yet I do not apprehend, that the presiding officer is bound to proceed with equal quickness, so as to deliver out copies thereof within three days next after such acceptance ; for, were he to guide himself by this construction of the words, then, as each party might give in their objections at different times, so each would receive the copies also at different times, which would consequently introduce great confusion, and be attended with a manifest disadvantage to those who were first prepared ; for example, should the scrutineers on one side deliver their objections to the presiding officer so soon as the fifth day after they receive the copy of the poll books, and he, in pursuance thereof, should, within three days then next following, give a copy of those objections to the other party, who in the mean while should forbear delivering his objections, until the tenth day ; in such case this candidate, who came last, would receive a copy of his antagonist’s objections, even before he had made out his own contrary allegations ; and by this means be prepared to answer a long time before the other side are so much as apprized of how many objections are

intended to be raised against them : this shows, that it is rather the duty of him who presides to adhere to some fixed rule of notice, in order that both the parties may receive the copies of each other's objections at one and the same time, that so the proceedings may be carried on in a regular and even course of justice ; and accordingly it seems to be the fairest construction of the clause, that he ought not to deliver out such copies, until the third day next following the expiration of the ten days, within which time the objections were to be presented unto him ; for, although he may indiscriminately leave it to both the candidates to proceed at their own leisure, yet, if he were to govern his, by the result of their conduct, he would find, that, as they acted variously, he would be led into perplexity and confusion by following their different steps.

But there is yet a further and a very material point to be settled, which is entirely left to his own appointment ; for, although the statute directs, "That the presiding officer shall, within ten days after he has delivered copies of the objections (having heard the candidates touching such their objections), declare which of them is duly elected ;" yet there is no day fixed, when he is to enter upon such examination, and hear the parties touching their ob-

jections : now it must be supposed, that some time will be required for the scrutineers on each side to prepare their answers ; another part of the time will be taken up in hearing publicly what each have to say in their own defence, and in support of what they allege against the others ; and some leisure must be allowed to the presiding officer to recollect the proofs, and form his judgment, so as to make a fair and just decision : he therefore is here to use his own discretionary power, and divide the ten days into such proportions as may best answer these several purposes.

From hence the presiding officer may learn how cautious he ought to be to act his part duly and regularly, and not in the least to be led aside by the behaviour or importunity of either of the candidates : if they are guilty of any particular misconduct, it will not, as before observed, unless carried too far, make void the proceedings ; but the misbehaviour of him, who presides over the whole, may give very unequal advantages to one side, so as to endanger the right of election, or even to stop both the parties from coming to the proof of their merits ; the punishment for such a misbehaviour in his office, it is true, is according to the statute, only the forfeiture of two hundred pounds. But it must be supposed, that

one, who is in such a station in the City as to preside at these elections, will make the regard to his own honour and reputation in the world a greater tie to his good behaviour, than the dread of any penalties from informations or prosecutions at law ; in order, therefore, that such a one may act consistently to his character and the duty of his office, he ought to pursue the directions of the statute by a certain and determinate method ; and to that purpose, so soon as the scrutineers are appointed, he should calculate and fix upon the several periods of time in which he will give out copies of the poll books ; receive the objections ; deliver out copies thereof ; enter upon the examination ; and finish the scrutiny ; and thus notify, in writing, what the particular days are, in which he has settled each particular act to be done, and, according to the fairest computation, peremptorily appoint the sixth day after the scrutiny is demanded, for the candidates to receive the copies of the poll books, and the tenth day, at farthest, next after such sixth day, for the delivery of the objections to him, and the third day next after such tenth day, for his giving out copies thereof to each, and then appoint such time for his entering upon the proofs, as may be sufficient for his own information, and satisfactory to both the contend-

ing parties; and herein be pleased to take notice, that the Wardmote, from the close of the poll, must be adjourned to that particular day, which is so appointed for the entering upon and hearing the merits and proofs touching the objections.

According to this method of regulating the time upon each step and process, the poll, though it must be finished in three days, may not be declared, until the seventh; and from thence to the declaration upon the scrutiny will be about thirty days more, including all the intervening Sundays.

The contending parties, being thus prepared to proceed in time, must have been equally diligent all the while in adjusting the form of their proceedings, and in getting good intelligence against whom to object; and in procuring the proper proofs and evidence for the support of what they intend to allege.

To this purpose, it is usual, upon a *nice and warm contest*, for both sides to print a list of the names of those who voted against them, with an advertisement at the head, setting forth the several disqualifications, and desiring their friends to detect all such pollers in the said list as lie under any of those disabilities, by which their right of voting may be called in question.

The scrutineers, in the mean while, are to

inspect the several Ward and parish-rate books,* and examine the collectors thereof, in order to discover, who were deficient in not being rated, or in not paying to the full of what they ought, before the time of election:† this is an objection that most frequently occurs, and therefore, by such an inquiry, they not only pick out and detect the bad pollers for the candidate, whose interest they oppose, but also find out which of their own friends are liable to the like objection, and so prepare themselves accordingly to make their defence.

After having fixed upon the number of persons they intend to object to, it is advisable to draw up and deliver to the presiding officer, a general objection against each poller, as if he lay under every disqualification, although upon the hearing, but one or two in particular are intended to be urged; for as they will be bound to abide by the objections given in, they would otherwise be precluded from the liberty of raising any other objection

* [If they can get them.] Ed.

† [The Collectors of Ward and Parish Rates stand in the character of a trustee of the truth for both parties, and ought neither to give information to, nor identify themselves with either. But the rate books which must be considered as evidence, until controverted by proofs, should be taken into the impartial custody of the returning officer, for the free reference of both parties.] Ed.

that may perhaps be afterwards discovered ; for the intent of delivering the objections to the presiding officer, being, as before mentioned, both for his own information, and also that he may apprise the other side, by delivery of the copies, what are the objections intended to be alleged against them ; he should consequently not hear any matters discussed other than those so prepared by way of notice and information.

For this purpose I have taken the liberty of appending a specimen of the form of a general objection,* collected from every circumstance mentioned in the statute, which either gives or takes away the right of voting ; and which, according to the direction of the act, must be particularly written against each respective name, to whose vote they shall object ; and therefore to write an objection against the first name only, and then by way of abbreviation, to put the word ditto to all that follow, may be deemed no objection at all as to them.

The objections being delivered to the presiding officer, it now comes to his turn again to act with that equal indifference as to avoid at least any objection being made to him ; he therefore must begin to transcribe the copies

* Appendix, No. XII.

in the most private manner, concealing any errors, deficiencies, or irregularities, which may have been committed by either side, as to time, form, or method of proceeding; for, as he is to judge between each, he is by no means to inform either party of the steps which the other have taken; the statute nowhere directs, that the scrutineers should come together to present their objections, or that they should both follow one and the same method of drawing them up; each must be supposed to know what the law requires, and, if they fail in their obedience, it must be at their own peril; but he ought however to give notice to both to come together, and receive the exchange of their respective objections; for, as they set out at one and the same time to prepare those objections, upon the receipt of the copy of the poll, so ought they to have equal opportunity allowed for their mutual defence.

And now, the candidates and scrutineers being prepared and met at the day and place agreed upon, the presiding officer is fully to hear such of the said candidates as shall desire the same, or some person appointed by them, touching their objections; therefore upon a request being made, any other person it seems may be appointed to assist the candidates and scrutineers in speaking to and ex-

plaining the points in dispute; but this is very seldom desired, since it must be supposed that such scrutineers are always chosen as are of sufficient abilities to manage the examinations and proofs of their several objections; in which it is usual for each party to proceed alternately against every poller, in the order they are ranged in their several precincts; and herein it is generally expected that the presiding officer should publicly declare his opinion upon each objection, at the time and in the order they are proposed, and not reserve any points, except such as are really doubtful, to an after consideration. This is enjoined to be observed upon the elections at the Common-Hall, by act of Common-Council before cited, of December 6, 1712, Sir Richard Hoare, Mayor;* but however, since there is no express order to this purpose, with respect to those who preside at a Wardmote scrutiny, it must be left to their own discretion, in which it cannot be doubted, but that the most candid behaviour will always be the most satisfactory.

Having thus far discussed the several points to be settled, with respect to the time and manner of proceeding, we must now examine

* See page 36.

by what rules of justice or equity the right of voting is to be determined upon the hearing of every objection.

To this purpose, I must offer several observations on each clause of the statute made for regulating these elections, which in any manner affects the rights of the freemen inhabitants of the City, with respect to the choice of Aldermen and Common-Council Men ; and, in doing this, I will pursue the same method I have before laid down ; first, explaining, in as clear a manner as I am able, the reasons and principles upon which the right of voting is to be considered, and then subjoining to each article the particular cases on which any doubts may arise, with the determinations they ought to receive ; for I cannot be too explicit in a work which is intended to prevent error, and neutralize any advantage that might be taken of any obscurity of language or uncertainty of expression.

And, first it must be observed, that, by section 7, of this statute, it is expressly enacted,*
 “That the right of election of Aldermen and Common-Council Men for the several respective Wards of the City shall belong and appertain *to freemen of the said City, being householders, and paying scot, and bearing lot,*

* See Appendix, No. IV.

when required, as therein is after-mentioned and provided, and to *none other whatsoever*.”* But then the following provisoes are not very clearly expressed, from a neglect of accuracy in the connection of them; for the eighth clause and part of the tenth ought to be joined together, the ninth being placed between by way of parenthesis; and the latter part of the tenth clause, relating to partnerships, should have stood separate by itself, as the subsequent one does relating to several inhabitants:† and then the whole might be read as follows:—

Sect. 8, “ Provided that the houses of such householders be of the value of ten pounds a year, and that such householders be the sole *occupiers* thereof, and have been in *possession* of a house of such value in the Ward, twelve calendar months next before the election.”

* [By this simple clause, *many thousand* persons were excluded from Voting at these elections who had previously done so, either by right, or by an unauthorised sufferance which had been claimed as prescription.] Ed.

† [Errors of arrangement in Acts of Parliament, are not uncommon, and principally arise from erasures and additions made in committee, which frequently interfere with the original compactness of their parts. In the present instance, the interpolation may well be forgiven, for the ninth Section which it is objected, disconnects the subject, “by way of parenthesis”—is in fact one of the most important parts of the Act, inasmuch as it determines and sets at rest what shall be understood by the long disputed term *Scot*, as a contribution towards the state of the city.

And provided (sect. 10), "*That such householder shall, within the space aforesaid, have been rated and paid his scot to all and singular the rates [and taxes, OTHER THAN AND EXCEPT ANNUAL AIDS GRANTED BY PARLIAMENT,] whereunto the citizens of London inhabiting therein, are or shall be liable, or thirty shillings a year, at least, to all or some of them [EXCEPT AS AFORESAID.]*"*

And then sect. 9 should follow, in which the said rates and taxes are ascertained, and whereby it is declared, "*That in case such householder has been charged to, and paid all the said rates, or thirty shillings a year to all or some of them, he then shall be deemed and taken to be a person paying scot.*"*

And here the latter part of the 10th section should begin, "*That in case any two or more partners carry on a joint trade in any such house, [and shall have been Householders of*

The ninth Section, as also the fifth and sixth, were added to the Bill by the Lords; and, when the very essential importance of those parts of it is considered, the upper House of Parliament must be looked upon not only to have been the best legislators, but also the conservators, as far as on them lay, of the true independence and prospective quietude of the City of London.] Ed.

* See Appendix, No. VI. [Those parts of the text enclosed within brackets were omitted by the author, and have been supplied from the Act, by the Editor, as highly essential to the true comprehension of the statute.]

such house by the space of time as aforesaid,] such partners, shall, paying their scot in manner aforesaid, and bearing their respective proper lots, have votes, [so as such house wherein such partners carry on their trade, be of the yearly value of as many sums of ten pounds as there are partners.']*

* [Appendix, No. VII. After defending the legislation of the Lords, as in the previous page, it may not be without advantage also to point out the perspicuity of arrangement given to their labours:—

Sect. VII. Declares the qualification for the franchise to be tripartite; that is to say, a voter must be,—

1. A freeman of the City of London,
2. A householder,
3. In Scot and Lot.

Sect. VIII. Limits the second part of the qualification, to a minimum of ten pounds per annum.

Sect. IX. Defines the third part of the qualification, and declares the minimum of amount, and particularizes the rates and taxes that shall be taken to constitute a contribution to *Scot*.

Sect. X. Extends the franchise to partners carrying on a joint trade, and declares such *joint occupiers* to be *severally Householdors* for the purposes of the Act.

And here it may not be inapplicable to draw attention to the 11th Section, the more so, because it has not here found a place in the text, where by contrast it, in a remarkable manner would point out the true meaning of the preceding portions of the Act, and the intention of the legislature in so framing it.

By the 11th Section it is provided "that where two persons *and no more*, not being partners, shall have by

The clauses being thus placed in a more natural and less confused order, we may the more easily explain the distinct qualifications described in each as necessary to entitle one to vote; but it is a great pity that an act intended, as declared in the preamble, "For settling the right and freedom of such elections, and putting a stop to controversies and dissensions, and the ill consequences of the same," should be so drawn up, as to admit of and tend to different consequences, on account of the variety of constructions which

the space aforesaid, *severally inhabited* in the same house, such two persons, severally paying their Scots and bearing their respective Lots as aforesaid, shall have Votes, so as such house be of the yearly value of twenty pounds or upwards, and that each do pay the yearly rent of ten pounds at the least, for his respective part of such house."

This apparently enfranchising clause was in fact, the section that *disfranchised* the large body of freemen who had theretofore exercised the franchise as *inhabitants*, either rated to Scot in a small amount, or not rated, or not liable thereto.

In this disfranchising clause we find for the first time in the Act, the term *inhabitant* applied to a qualified voter. And the object is plain in the fact, that while for premises of one hundred pounds per annum rent, rated to Scot at fifteen pounds, *ten* joint occupants, partners in trade, are entitled to vote *severally as Householders*; only *two* several *inhabitants* are entitled to Votes for such premises, and if more *inhabitants* than two, the whole are to be disallowed.] Ed.

may be put upon the meaning of each clause ; however, I must again recommend, that in disputes amongst fellow-citizens, relating to their right of choosing their own officers, the most favourable interpretation be put upon every doubtful meaning ; and I hope, in proposing these principles, to obtain the concurrence of all such contending parties, who have no other view by demanding a scrutiny than that of detecting those who really and in conscience are not entitled to the privilege of voting.

The first qualification to vote at these elections, according to ancient custom, as well as the last act of Parliament, is that of being a freeman of the City of London ; so that to be free of a company only, is not sufficient,* nor

* [It is a matter worthy of enquiry, how it occurred that the constitution of the city came into so incongruous a state, as that a freeman of a City Company might yet not be free of the City. In early times when "adventures beyond the seas" were rare, and commanded a bounty from our sovereigns, retail and handicraft trades were the occupations of our citizens, and alone had the protection of the city freedom as a licence to pursue them therein. Thus, before the city companies existed by charter, the citizens were a commonalty of freemen : and we are told that the guilds or fraternities had their origin in *combinations of the citizens* for mutual protection and the better carrying on their trade. The qualification for the freedom of a Company was thus based *upon the freedom of the city*,

is it necessary that he should be on the livery; nor is any time limited how long he ought to have taken up his freedom; for, if he gained his copy but the next day, or hour, or any time before the commencement of the election it will be sufficient; which election is always supposed to be made upon the holding up of hands, as I have more than once mentioned; the poll and scrutiny being only the subse-

and the titles by which the several chartered companies were incorporated will shew, that none other than freemen entitled to carry on their several trades within the city, could be members of them—the very constitutions of those societies being to exclude all others. Neither under any other terms could those Companies or the members of them become accessory to the representation and government of the city; and that they were so cannot be denied:—

In 1351, 25 Edw. III. A precept was sent by the Mayor to the [twelve] Companies requiring them to assemble their good people, and to cause four to be chosen to consult with the Aldermen and Sheriffs on the business of the City. *Lib. F.* 206. And in 1475, by Act of Common-Council, the franchise was extended by declaring the election of Lord Mayor and Sheriffs to be vested in the Master Wardens and Livery of the City Companies.

The government of the Companies in a Master, Wardens and Livery, appears by their several charters to have been so appointed; the latter being described as assistants to the Master and Wardens, in matters of Council and for better government; and if any liveryman refused to take upon him the office, the Lord Mayor might fine him, and bring an action of debt for the same, (1 *Mod. Rep.*) But in this

quent proceedings thereon to adjust the numbers and proper qualifications, which, when adjusted and declared, have reference to the first election, the right of which is here to appertain to none but persons at that time properly qualified as freemen; for the poll thereon can be demanded only by the candidates, or any two of the electors, which im-

matter the offender might not be committed, because it did not concern the government of the city, but the state of the Company only, (2 *Lev.* 200.) Still the jurisdiction over them as component civic institutions is perfectly preserved and recognized.

Thus as the Companies were composed of the most responsible and wealthy citizens, so were the Liverymen the main portion of the commonalty of the Companies, and must necessarily have graduated from freemen of the city to have arrived at that position. It is however no difficult matter to suppose that in process of time, a degeneracy in the organization of the Companies may have taken place, and that by a relaxation of internal management, disorders and irregularities may have arisen; but it is exceedingly difficult to discover by what process of reasoning the Court of Common Pleas could arrive at their solemn judgement, that *every member of a company is eligible to the Livery though he be not free of the city*. This opinion however so contrary to the original institution of the Chartered Companies, and adverse to the privileges of the city, was given in the cause, *The Weavers' Company v Handyside*, Mich. term, 1742,—a few months only before Sir W. Mildmay published his work; so that the reason of his observation in the text may probably be traced to that recently decided case.] Ed.

plies those who had then a power to elect ; and, as none but such could demand a poll, so none but such can have a right to vote at the poll ; and therefore a freedom obtained after holding up of hands, in order to entitle one to take the oath upon polling, "That he is then a freeman," enables him, indeed, to swear what is true, but doth not antedate his right of voting ; the particular cases therefore upon this point may be stated and answered in the following manner :—

A—is free of a company, but not free of the City.

BAD.*

B— was not made free of the City until the day of election, but was admitted before the declaration made at the Wardmote upon the view of hands.

GOOD.†

C— was admitted to his freedom on the same day, but it was after the declara-

* So determined upon the contested election between Sir J. Eyles v. R. Hoare, Esq. 1739.

† So determined upon the mandamus, Egleton v. Ewer.

tion made on the view of hands, though before the poll.

BAD.*

Such freeman in the next place, being admitted in due time, must by sect. 8. "be a householder—the sole occupier—and in possession of a house within the Ward, of ten pounds a year value—for twelve calendar months next before the election."

Taking therefore these qualifications into distinct consideration, it must be observed, that *a householder is understood to be him, who inhabits [occupies?] and is rated to such a house*, whether he be real owner or tenant thereof, *or whether he doth or doth not diet or lodge therein*; for *provided he appears as the inhabitant, so as to be ready to answer every demand, and submit to all offices, duties, and taxes, as the reputed owner of such house, and his name be so set down in the common rate books, he then properly comes under the name of a householder, though he may not perhaps be a housekeeper therein*;† insomuch that if a Citizen should happen to have two

* So determined upon the mandamus, Eggleton v. Ewer.

† [The author appears again to have fallen into an incongruence of expression. If the same terms had been here employed as in stating the disqualification, (page 58) no

houses in different Wards, making use of one for the convenience of trade only, and of the other for the lodging of his family, and is rated to both, and frequently attends at the one and the other, *he must be deemed a householder in both the Wards, and so far consequently entitled to a vote in each.*

So also, as to being the sole occupier of a house, it is not necessary that one only with his family should live in or belong to it, for exposition could have been more explicit; but a householder who *inhabits*, yet “doth not diet or lodge therein,” is beyond etymological comprehension. Trying the Act by its own internal evidence, we must adopt the term *occupant* [as above suggested] for a general term descriptive of all classes of voters, and then the course of argument laid down in the text, will be perfectly in agreement therewith. Thus the franchise will be:—

1. In Householders—sole occupants,
2. In Householders—joint occupants in trade, *as many as the amount of rental and rating will admit.*
3. In Inhabitants who are Householders and sole occupants.
4. In Inhabitants severally occupying—TWO ONLY, *for any amount of rental or rating however large.*

The freedom of the City of course being a requirement for each and all.

The first and third Classes are dissimilar only as to habitation, both being occupants and householders, under which latter denomination they derive their right of voting. In the comparison of the second and fourth Classes, the *occupation* and not the habitation is shewn to be the object of the act, as apparent in the encouragement of the trading interests to the exclusion of mere inhabitants.] Ed.

whatever number of lodgers or inmates there may be, yet *he who is the owner or tenant of the whole, and who is solely rated thereto, is the only person who ought to be looked upon to be in the sole occupation of it*; on the contrary, if a landlord is only in the possession of a house which he never lives in [occupies], though rated thereto, but suffers a stranger to be the sole occupier thereof, *who is not taxed, although he is the inhabitant*; in such cases neither the owner, nor the occupier, are any way entitled to a vote; for it must be distinguished in either instance, that the *being rated to a house, and not in the occupation of it, or being the occupier and not rated*, are equally insufficient for a qualification.

Upon this definition of such a householder and occupier of a house as is entitled to a vote, the determinations of the following points are here submitted:—

A— *is rated to a house and appears as the inhabitant, and performs all duties required; but he does not diet or lodge therein, as he makes use of it chiefly for the convenience of trade.*

GOOD.*

* [This is the exact position for the franchise described by the enacting clauses, (Sect. IX & X.) which require

B— is the occupier of a house, but submits to no rates, the landlord having undertaken to answer the same.

BAD.

the payment by Householders of such annual rates (with an exception) "whereunto the Citizens of London inhabiting therein are liable." So that to be *Scotted* and *Lotted* as an *inhabitant* are the conditions imposed upon the reformation of the constituency of the wards.

It is only by a knowledge and comparison of the pre-existing state of things that the necessity for this form of expression can be appreciated. But it will readily appear from the facts:—

1. That by ancient custom, every *inhabitant* (freeman or unfreeman) was liable to *Scot* and *Lot*; although such portion as were freemen, only were electors.

2. That following such ancient custom, most if not all of the rates which the Act declares to constitute a payment to *Scot*, were by statute, and are levied upon the inhabitants; so that it became necessary to identify the *liability of an inhabitant*, as the position required; and in no other way, in those Sections is the term *inhabitant* employed in respect of the franchise.

Upon this question, one of two things must result; either that a householder, in the position described, rated to, and contributing his *Scot* as an *inhabitant*, under the terms of the Act, must be entitled to the privileges annexed thereto; or if it be declared that such occupancy does not confer such privilege, neither can it carry a liability to the taxation levied upon a condition which he is declared not to fulfil. A householder cannot be declared *an inhabitant for the purpose of taxation*; and at the same time *not an inhabitant, to deprive him of a privilege founded upon such his liability and contribution.*] Ed.

C—, the landlord, as in the preceding case, is rated, but suffers B to be solely in the occupation of the house.

BAD.

D— solely rents and is solely taxed to a house, and occupies one part of it himself, and the rest he lets out to lodgers and under-tenants.

GOOD.

The next objection that follows is for not being in the possession of a house of the value of ten pounds per annum ; now the value of such a house must be to the true and real amount of ten pounds a year at least, estimated by the price any one would give for it, or by the proportion it is charged with in the tax books, or by the rent that is actually paid for it. A house occupied by the owner himself, or a tenant at rent free, may yet be computed and taxed, as being above the yearly value of ten pounds ; but, if less rent than that be paid, it must be valued at so much less, whatever more it may be thought to be worth : for the rent that is demanded ought to be in the first instance the measure of its value, unless it be proved that some other

consideration was given by the tenant, as a fine for example, paid on the entrance, which may be computed as equivalent to a rent of ten pounds; so likewise if it is agreed to go at a greater annual rent, and the tenant is allowed back a quarter's payment on account of repairs, whereby he will actually pay that year less than the ten pounds, yet the value of the house itself must not therefore be supposed to be diminished; for the proof that such a one is a householder of a house of such a value must arise from the evidence of the agreement to pay so much for it, whether that rent be actually paid, or from what time soever it was to commence, does not disprove the qualification, provided such its annual value was ascertained, and the possession thereof delivered twelve calendar months next before the election; and provided it has been actually rated and taxed within that time to the proportion of so much rent: for, after all, the chief proof of the value of a house must arise from the evidence of its being taxed to such a proportion, which may be soon known by reference to the collectors of the land-tax, or rather in this case, as it is a Ward duty, by the proof of what is paid to the lamp-rate, by reason that the statute of the 9th of George II. made for the better enlightening

F

the streets of London, has, in section the 1st, prescribed the different proportions of the rates and assessments thereby to be raised on the inhabitants ; that is, that each and every house under the yearly rent of ten pounds is not to be charged with a sum exceeding seven shillings a year, but every house above the yearly value of ten pounds is to be charged in a higher proportion ; consequently therefore, as all the houses are every year charged by an occasional act of Common-Council, in pursuance of the direction of the above statute, the proportion of the rate submitted to be paid by each inhabitant is a previous declaration and evidence of the rent and value of the house ; and, if it be not taxed to the proportion of a house at ten pounds a year, the other proofs of its being worth more ought not to avail ; for *the privilege of voting is allowed not merely on account of paying so much rent to a landlord, but because the community receives a benefit by the payment of such a duty to the Ward.*

A person in the possession of two houses in the same Ward, which both together amount to ten pounds per annum, though neither singly are so, ought, in common equity, to have equal allowance as the occupier of one house of that value ; for thus the statutes re-

lating to the poor are expounded, so as to allow the payment of six pounds a year for one tenement, and four pounds for another, to be equivalent to one rent of ten pounds, for the purpose of gaining a settlement; and therefore in this case if it appear, that the person does the same duty and pays equal rates to one inhabiting a house of ten pounds a year, that is sufficient, and is all that ought to be required towards gaining a qualification; and this clause ought more especially to have a liberal construction in favour of a right which was prior to the act of Parliament.* The several cases, therefore, that arise upon this point may thus admit of a reasonable allowance:—

A— lives in a house for which he pays no rent, but it is estimated and taxed at more than ten pounds.

GOOD.

B— agrees to pay more than ten pounds a year, but, by reason of some repairs

* [It was a complaint immediately previous to the passing of the Act of 11 Geo. I. c. 18, that all freemen inhabitants whose names were upon the rate book for the relief of the poor were admitted to vote; and that numbers were so inserted, without ever paying the assessment, for the mere purposes of election.] Ed.

wanting, his landlord excuses him part of the rent.

GOOD.

C— pays only eight pounds a year, but it is on account of an extraordinary fine paid on entrance, in lieu of a higher rent, the house being actually worth more, and *taxed to more than ten pounds.*

GOOD.

D— pays less rent than ten pounds for his house, and is taxed at less, and, though he surmises it is worth more, yet proves no equivalent offered, by which it might be computed to be of greater value.

BAD.

E— rents two houses joining to each other, or in different parts of the Ward, which both together are taxed to the amount of ten pounds a year, though neither of them singly are worth so much.

GOOD.*

* So determined upon the trial for a mandamus, *Egletton v. Ewer*, 1740. [So also premises standing in two wards, rated in each at or above ten pounds, have been admitted to confer the privileges of such assessment.] Ed.

The time in which such householder must be in the possession of a house of such a value, is the space of twelve calendar months; which term therefore must be complete and fully ended, before or at the day of election upon the view of hands: as the computation of calendar months is from the first day of January to the first day of February, and so on; so likewise, if possession be delivered in the middle of any month, the space of time must be reckoned to the same day of the same month in the year following.

It is not requisite, that a person should continue all the while in the possession of the same habitation, for if he lives part of the year in one house, and then removes into another, both in the same Ward, and each upwards of ten pounds a year, if he has thus remained an inhabitant of the Ward during the whole twelve months, and been accountable for all duties and services thereto belonging for each house, immediately from his leaving the one to the instant of his entrance into the other, without any interruption or break of time, he then ought to be construed to be within the words of the statute, which only requires his having been actually in the possession of *a house* (not of this or that particular house) in the Ward wherein the elec-

tion is made, for twelve months before.

The usual time, we know, for tenants to enter, is on one of the quarter feast days, though perhaps he may be admitted on some other intermediate day, and even before the time from whence his rent is to commence ; in which case it must be proved, that it was then an actual delivery of the possession, by giving up the keys, &c. and not a bare licence or liberty to enter for the sake of making preparation, against the time that he was to become tenant ; for the words of the statute are, that he must have actually been in the possession for twelve months before, so that *his being a householder must be computed from the time only that he was allowed to be the actual occupier of the house in his own right, so as to become accountable for all duties and services belonging to the same,** in the manner as here stated under the circumstance of each particular case :—

A—entered into possession the 22d of December, the election for Common-Councilmen, upon view of hands was declared -

* [This position is parallel to the argument at page 38, & n. It is neither the occupancy nor habitation *in itself* that confers the franchise ; but *the consequence of either in the liability to Scot and Lot.*] Ed.

on the 21st of the same month, being St. Thomas's day in the year following; but, as a poll was demanded, he did not poll until the 22nd, at which time his year was complete.

BAD.*

* Vide a parallel case to be determined upon elections at the Common-Hall, with respect to a liveryman not having been twelve months complete upon the livery, &c. at the time of election, page 42. And so determined upon the trial of the mandamus, Eggleton and Ewer. [The cases also are decidedly parallel as to the observations made upon the former (*see note, page 38.*) In this case the *completing act* which confers the franchise is the occupancy of a house of ten pounds a year, and the *possession* of it *twelve months* before the day of election;—in each, the right is made to accrue at a similar antecedence of time. It must not be forgotten that the object of the Act of Parliament was, not to confer the franchise, but to confine it to an appreciable standard. In one operation it disfranchised a vast number of freemen who were not contributors to the state of the city, and made the prospective electors rate payers to a specified amount. Therefore the freedom in this case, although a necessary qualification as a means of excluding *foreigners* or non freemen from exercising a voice in the government of the city; yet was the amount of rental and the proportional assessment to *Scot*, the grand touchstone, which was assumed to create something like an equivalent to the respectability attached in the former case to the possession of the Livery, and the check in that case provided as to the payment of the livery fine.] Ed.

B—has lived for some time in one house within the Ward, and some time in another, so as to have been an inhabitant of the Ward for a whole year, and has answered all duties for the same without interruption.

GOOD.

C—entered into possession by consent of his landlord on the 21st of December, being St. Thomas's Day, though he was not to commence paying of rent until the 25th, being Christmas day, and the election was on St. Thomas's day the year following.

GOOD.

D—was to commence a tenant, as above, on Christmas day, and, though he had leave by the former tenant now and then to enter the premises to order repairs, yet the actual possession was not delivered to him by the landlord, until Christmas day, and the election was on St. Thomas's day following.

BAD.

We are now to proceed to the next head of objections with respect to the farther qualifications that are necessary ; for, by section the

7th of the same statute, we find, that, though one be a householder of a house of ten pound^s a year value, for twelve calendar months, he is not yet qualified, unless, according to this proviso, "*Such householder*, within the space aforesaid, shall have been rated and charged, and contributed and paid his scot to all and singular the rates and taxes (EXCEPT ANNUAL AIDS GRANTED BY PARLIAMENT),* whereunto

* [This exception is particularly made in the several Sections of the Act which refer to the payment of rates as a component qualification for the franchise; and appears to be grounded on the following reasons:—

1. That as the franchise is local, and for local governance only, so is the qualification also local.

2. That the rates and taxes contingent to the franchise, by custom and ancient usage were contributions towards the state of the city, known by the term Scot.

3. That the 7th Section of the Act recognizes the franchise of election to be as it anciently had been—in freemen in Scot and Lot; and the 9th Section in declaring what shall be understood by the term Scot, defines the same also within the ancient limits, as a contribution towards the state of the City; and for the prevention of miscomprehension, in express terms, *excepts parliamentary aids or taxes, as being general to the whole kingdom*, and not necessary to a qualification for a local purpose. Hence it will follow that to regard the national taxation in any way as a contingent of the scotting necessary to the local franchise, must be an invasion of the principle upon which such franchise is founded, as well by ancient custom as by the confirmatory authority of the legislative enactment which expressly declares an exception, not only of any annual

the citizens of London, inhabiting therein, are, or shall be liable ; or shall have paid in the

parliamentary aids then existing, but also of such as might thereafter be granted.

These remarks particularly apply to the assessments upon houses, windows, &c. commonly known as the "Assessed Taxes," which have occasionally and by a kind of sinister logic, been advanced as a qualifying test of a Wardmote voter.

The inhabited house duty has been some time abolished, so that no observations are now required respecting it. The duty upon windows has however been preserved to us, and augmented by various acts of parliament, from the time of its creation by William III, and as such, should be *dear* to every Englishman, as a connecting link with the founder of the "glorious constitution," then established. It consequently existed as an exception not requisite to the franchise at the period when the act for regulating the city elections became a law ; and it still exists as an exception contemplated and provided for by the terms of that exception. It may moreover be observed as a confirmation of the position, if any be required, that by the assessed tax acts (21 Geo. II. cap. 10, 24 Geo. III. cap. 38, &c.) it was expressly declared, that *none should gain a settlement by the payment of the window tax and the inhabited house duty* : so that if a liability to them was declared not to confer any civil right, a non-liability could hardly be construed a deprivation of any civil right otherwise derived.

The great argument of disqualification has been grounded upon the 57th Geo. III, cap. 25, which after reciting the 48th of the same King, cap. 55, by which certain duties were repealed and others granted upon windows and lights, and upon inhabited houses, declares that "Whereas it has become usual in cities and large towns

whole to the said rates and taxes, or some of them, **EXCEPT AS AFORESAID**, thirty shillings a year at least."

and other places, for one and the same person, or for each person, (where two or more persons are in partnership,) to occupy a dwelling house or dwelling houses for their residence, and at the same time one or more separate and distinct tenements or buildings, or parts of tenements or buildings *for the purposes of trade*, or as warehouses for lodging goods, wares or merchandize therein, or as shops or Counting Houses, *and to abide therein in the daytime only* for the purposes of such trades respectively, which have been charged with the said recited duties although no person inhabit or dwell therein in the night time; and it is expedient in such cases to exempt from the said duties, such tenements or buildings or parts of tenements or buildings as are or shall be solely employed for the purposes herein mentioned; be it therefore enacted, that on due proof made to the satisfaction of the respective Commissioners, &c. that any person or any number of persons in partnership, together respectively occupying a tenement or building or part of a tenement or building, which shall have previously been occupied for the purpose of residence wholly, as a house for the purpose of trade only, or as a warehouse for the sole purpose of lodging goods, wares or merchandize therein, or as a Shop or Counting House, no person inhabiting, dwelling or abiding therein, except in the day time only, for the purpose of such trade, such person or each of such persons in partnership respectively residing in a separate and distinct dwelling house or part of a dwelling house *charged to the duties under the said Act*, it shall be lawful for the said Commissioners to discharge the assessment made for that year in respect of such tenement or building which shall be so used for the purposes of trade, or so employed as a warehouse for the sole purposes of lodging goods, wares or merchandize therein or as a Shop or Counting House."

We are first to observe that these rates and taxes, to which such householders are to contribute their scot, are by the 9th section

The 4th Section of the same Act provides that a servant may be allowed upon the premises by night, under the licence of the Commissioners, for the purpose of watching, without depriving the occupier of the benefit of this exemption.

This Act has obtained the style of the "Warehouse Act," and by a species of reduction from that term not authorized by the internal evidence of the Act itself, it has been argued that a building so exempted, not being *bonâ fide* a dwelling house by night, cannot be *inhabited*, neither is the occupier an inhabitant;—they who take up this position also urging that dormant habitation is necessary (*if only for one night in the year!*) to qualify for the franchise under the Act of 11 Geo. I; although for all and every other purpose the occupier shall be construed an inhabitant, and his occupancy in trade render him liable to all the local assessments thereto appertaining, and particularly to the Scotting and the liability to Lot requisite to the elective franchise.

It is almost needless, after the exposition of the franchise in the preceding pages, to observe how unauthorized and futile are such arguments; and how erroneous must be any judgment which disallows a vote under a delusion so self-evident; for if the express limitation of the qualification to a defined local scotting, and the exception as to other taxation, be not sufficient; and it were to be argued that the national taxes did in fact form a component of the Scotting necessary to confer the local franchise; then an exception might further be claimed under the 12th Section of the 11th Geo. I, cap. 18, which provides "that nothing in this Act contained shall extend or be construed to extend to oblige any person or persons to pay any Scot or bear any Lot from which *they are or shall be exempted*

enacted, "to be a rate to the church, to the poor, to the scavenger, to the orphans, to the rates in lieu of watch and ward, and to such other annual rates, as the citizens of London, inhabiting therein, shall hereafter be liable, *other than and except annual aids granted or to be granted by Parliament;*" but some of these enumerated taxes, such as the orphan's tax,* and those in lieu of watch and ward, have been laid aside for some years, and others not there specified, such as the lamp

and discharged by act of parliament, Charter or Writ of Privilege; but that such person or persons so exempted and discharged shall and may vote at any Election of any Alderman, Common-Councilman or other officer usually chosen at the Wardmotes of the said city notwithstanding."

The local franchise therefore, as to that part of the qualification which depends on taxation, can only be shaken by a non-contribution to that upon which it is based, namely, the local Scotting towards the State or the 'Church and State' of the City, under the terms and conditions of the Act of Parliament expressly passed to settle and determine the rights of voters in these elections.] Ed.

* [Formerly the Lord Mayor and Aldermen by Stat. 1 Rich. II. formed a Court of Record, after the nature of the feudal Court of Wards, under the denomination of the Court of Orphans, for the guardianship of orphans of freemen under age and unmarried, together with the custody of their lands and goods, (2 *Danv. Abr.* 311.) Executors and administrators of freemen were bound to exhibit true inventories of their estates before such Court,

and watch rates, have since been established, and to which the citizens of London are now liable.

and give security to the Chamberlain for the Orphans' part, or they might be committed to prison until they obeyed, (*Wood's Inst.* 522.) And if any one without the consent of the Court married any such orphan under the age of twenty one years, the penalty was fine, according to the quality and portion of the orphan, and imprisonment until paid, (*1 Vent.* 178.) The custom of London in this respect was excepted from the operation of the 12th Car. II. c. 24, by which Wardships and Liveries were taken away. The Orphans fund thus formed, appears to have been employed as a trading stock, and also as a reserve fund for the occasional necessities of the city; for in 1391, (15 Rich. II.) Wheat being sixteen shillings and eightpence the quarter, 200 marcs were taken out of the orphans fund in the Chamber of London, by Adam Bamme the Mayor, to which the Aldermen contributed £90 each, for the importation of corn from abroad, (*Noorthouck*).

By guardian and trusteeship thus created, the Lord Mayor and *Commonalty* of London, became answerable for the orphans money paid into the Chamber of the City, and by some accident became indebted to the orphans and other creditors in a greater sum than they could pay. (*Jacob. L. D.*) Indeed the funds had become so far dissipated, that the Chamber of London was closed for several years to the great distress and ruin of many hundred orphans, for the want of their portions.

The city was now indebted to her orphans and other creditors in £747,000; to make up which defalcation, application was made to Parliament unsuccessfully during three years, each attempt being rejected or treated with negligence. But what could not be had by fair application was at length accomplished by bribery, and it was

As there are many different kinds of qualifications depending on this clause of the sta-

enacted by stat. 5 & 6 Will. & Mary, cap. 10, that the lands, markets, fairs, &c. belonging to the City of London should be chargeable for raising £8,000 per annum, to be appropriated for a perpetual fund for orphans, and towards raising such fund, the Mayor and *Commonalty* might assess £2,000 yearly upon the personal estates of the inhabitants of the city. A duty also of four shillings per tun on Wines imported, and also on Coals, was granted; besides two shillings and sixpence on every apprentice when bound, and five shillings when admitted a freeman, for raising the said fund, which was to be applied to the payment of the debt due to orphans, and interest at four per Cent. Books of receipts and disbursements were required to be kept by the Chamberlain, to be audited yearly; and the Chamberlain or others misapplying the money, were to forfeit treble the sum.

By the same Act, the custom of the City as to the protection of orphans and the custody of their property was taken away from the Lord Mayor and Court of Aldermen, and no person was thenceforth to be compelled to pay into the Chamber of London, any sum of money or personal estate belonging to an orphan of any freeman for the future. The debt was converted into a capital stock transferrable to any orphan who might pay into the hands of the Chamberlain the debt or portion of any other, and be admitted to the benefit arising from such share.

Among other charges attending this act, it appeared by an entry in the Chamberlain's books, dated February 12, 1694, that Sir John Trevor, Speaker of the House of Commons had received 100 guineas for his services in the business, and Mr. Hungerford, twenty guineas; which being discovered both were expelled the house.

It is immaterial here to pursue the enquiry why such disinclination was manifested by the House of Commons

tute, so of course it must give occasion to the greatest number of objections; and herein

to entertain the application of the City for relief under such pressing circumstances; there is little doubt that the defalcation had occurred by the heavy taxation and ruinous expenses to which the city had been put during a very long period, embracing the civil war in the reign of Charles I; the fire of London; the compulsory loans of Charles II, and his seizure of their Charter; the unhappy reign of James II: and the no less expensive triumph of the "glorious revolution" of 1688,—all contributed to a debt, which was the unfortunate origin, and its liquidation the object of the orphans' tax.

In 1713, the original debt had been increased by £90,000; but in 1747, when the orphans fund was again before parliament, it appeared that by good management, a large sum of money had been accumulated, and it was proposed by a loan in addition thereto, to pay off the principal and interest of the debt. In 1751, the Act of 21 Geo. II. cap. 29, which charged an additional £2000 per Annum upon the Corporation estates, was obtained with this view.

In 1767, a further sum of £1,500 per Annum was granted by 7 Geo. III, cap. 37, by which Act the whole of the orphans fund was made available for various public purposes.

By a statement laid before the Court of Common Council, January 22, of that year, by Mr. Deputy Paterson, it appeared by computation, that the whole debt and interest due to orphans would be discharged by the year 1803; but in the interim, the "Orphans Tax" was dispensed with by Act of Common Council, 1795. From this review it will appear that upwards of one hundred years were required by the city to recover from its difficulties, and to get rid of obligations which no payment could discharge of the disastrous consequences occasioned by the unhappy defalcation.] Ed.

appears the most remarkable instance of that variety of construction which I have more than once observed might be put on its sense and meaning ; for, if we were to regard the express direction, it might be made a question, whether any householder could be entitled to vote, who had not been rated and charged, and contributed and paid to all the rates therein specified, as well as those the citizens are now liable unto ; but some of the rates therein mentioned, as I just now said, are not now existing ; to which no one is rated, and to which no citizen can be said to be liable ; others, *such as the church rate and poor's rate, are sometimes occasionally laid aside in many particular parishes, as not being wanted,** and to which there is no necessity for their being charged : to object therefore against a man, for not doing, or not procuring to be done, what is not in his power to do, or procure to be done, is so unreasonable, so contrary to justice and to common sense, that no one can

* [Alas ! those happy days no longer exist when a citizen shall run the risk of disfranchisement upon this score. The position however must have been embarrassing at a time when a *prescription of 300 years* was claimed for the poor rate as a sufficient Scotting. Parliamentary Committees however had long determined that assessment as the general criterion of a Borough Scotman, apparently upon the principle that a man should vote where he had gained a legal settlement.] Ed.

presume seriously to urge it, for such a strict adherence to the words would disqualify every man from voting, and destroy the very foundation of that law, which was intended to regulate, and not take away, the privilege of election.

This strict kind of construction has however been admitted under one consideration, that although a voter had been rated and paid all he was liable unto, yet, if his payment did not amount to thirty shillings in the whole, he was then set aside for not being rated to all, that is for example, for not being rated, amongst the rest, to the orphans' tax; they, who have allowed this objection heretofore, may perhaps have founded their opinion upon the suggestion of estimating the thirty shillings, as the least proportion that ought to be paid by way of purchase for the privilege of voting; and therefore that all advantages, even to a strictness, ought to be taken against those who contribute less than that sum; and in this view they might think such a literal construction seemed to concur even with the equitable intent of the statute; but it has since been adjudged, that such a determination is equally as unfair in this particular consideration, as in the more general instance in which I first stated it; because the only just medium is, that if a person pay less than

thirty shillings, when he is really liable to pay more, he ought to be punished for neglecting to be rated, or refusing to pay, what was so his duty and in his power to perform; but to punish a man who has paid, though little, yet all he was liable unto, or in his power, merely because he has not done more than was in his power, cannot surely be any rule either in justice or common equity.*

* [This is an excellent argument against the Act, and was the principal one maintained as the right of a very large number of Citizens who were disfranchised by that measure of legislation. No subject had been more a matter of dispute than the Scotting which should be deemed sufficient to confer a vote. Previously to the application to Parliament, which terminated in the Act of 11 Geo. I. it had been repeatedly discussed, "*whether freemen paying to one or more Scots and not to all*" should be so qualified. By some it was contended that any one contribution towards the state of city was a sufficient payment: the etymology of the word is perhaps the best interpretation of its own meaning, as well as answer to such argument.

Scot, (or shot, a word still in use in many parts of the kingdom) from the Saxon *Sceat*, implies a single part, share, quota, or proportion of an integral sum or sum total; so that without any reference to amount, if a citizen satisfied all his liability, he was to be deemed *probus et legalis homo*, and entitled to his privilege. Thus the ancient rule was as indefinite as could be desired for the argument in the text.

It was the policy of the time of Geo. I. to reduce the number of the existing electors by raising the franchise from such indefinite amount: we have already seen a mini-

Should any such objections therefore be made hereafter against one for not being charged to every individual rate enumerated in the 9th clause of the statute, or for not being rated to the orphans' tax, or even to the church and poor, if those rates are not levied in the precinct or parish wherein he lives ; they ought to be rejected as inconsistent with that reason and equity by which only this part of the statute can be enforced ; and thus we must necessarily give up the strictness of the reading, in order to come at such a meaning as may have some effect, and allow the

sum of rental established ; and now with the same view it is declared that a citizen rated and paying to the minimum amount of thirty shillings, shall be "deemed and taken to be a person paying of Scot"—*ergo*, that a less contribution "to all or some" &c. shall *not* be deemed "a payment to Scot" and consequently shall not entitle such person to a vote. This is the true meaning of the Statute, and the generally understood interpretation at the present day—if indeed there be a householder within the city rated in a less amount.

Nothing perhaps will better show the sad state of dissension by which the City was divided, than the construction put upon the above clause of the Statute. It must indeed have been a "strict kind of construction" that would, under the circumstances described, refer to a thing not existent. "The principle and foundation of law," said one of the brightest ornaments of the Bench, "is the perfection of human reason." By that test must we try its enactments.] Ed.

qualification to be sufficient if such person be rated, and has paid to all the rates which he and his fellow-citizens, inhabitants of the same precinct, are liable unto.

The next question then to be proposed is, whether, if he be not so rated to all which at that time he is liable unto, will such an omission destroy his right, notwithstanding he has paid all he is rated to, or thirty shillings in the whole to all, or some of them ?

This in the first instance may seem a proper question, for it may be argued, that as section the 7th allows the right of voting only to householders paying scot, &c. and as section the 9th is to be so far construed, that they only shall be deemed to have paid scot who have been rated or charged, and contributed or paid their scot to all the rates to which they are liable, or thirty shillings a year to all or some of them : these words, taken in this sense, imply, that every one ought first to be rated to all the taxes now in being, and then in the next place he must pay his scot to all, that is, to as much as he is charged with ; or at least he must pay so much of his scot to all or some of them as amounts to thirty shillings ; and hence some would urge, that this exception of thirty shillings refers only to excuse the non-pay-

ment of the scot to all, and that nothing can excuse the not being rated to all ; but, in answer to this, the method of reasoning, which, upon a general view of the words ought rather to prevail, is to admit the qualifying proviso of paying thirty shillings to extend as a saving for not being rated to all, as well as for not having paid to all ; for the words are conjunctive, that he must be rated and contribute to all, or lose is vote, except, (which exception must refer back to the whole)* he doth pay the sum of thirty shillings by way of satisfaction for not being so rated, or for not having so contributed to all, or some of the taxes, to which he is liable ; hence, therefore, we are to estimate, that the privilege of voting at these elections in a Ward, depends on the measure and proportion of what one pays to the duties that are required ; and the thirty shillings seems to be the medium, which, at least, is demanded of every one who is taxed to so much or more, and, if he satisfies to that amount, he becomes so far a purchaser of the right, and redeems all former omissions and neglects, for not being fully rated to all, or for the non-payment of the whole ; but, if a person, not being rated to the full, happens to

* [*Why not to the last antecedent ? See Note, p. 38.*] Ed.

pay less than the thirty shillings, then indeed any such particular omission will prove a fatal objection.*

It may, therefore, in general be determined, that he who has been rated to and paid all the taxes to which he is liable is sufficiently qualified, let his payment amount to never so

* [The terms of the Act appear much more clear and distinct than the exposition. If the words "rated and charged, and contributed and paid" are conjunctive,—and that they are so, is sufficiently clear,—they form but two parts—the beginning and the end of one proceeding—the rating being the first step towards necessitating a contribution,—for no one would either pay or be required to contribute to a tax whereto he was not rated; and on the other hand it would be compulsory upon him to satisfy any just amount to which he might be assessed, without reference to the present question. The thirty shillings to be paid "to all or some" of the rates, appear to have been a sad stumbling block, although the meaning is perfectly clear from the varied form of expression adopted in the section which immediately follows.

The 10th Sect. provides that a voter shall have been rated and paid his Scot to *all and singular* the rates and taxes (to which he is liable) or shall have *paid in the whole* to the said rates and taxes *or some of them*, thirty shillings a year *at least*. So that while no less contribution is a legal Scotting, all that may be advanced beyond the observations in a previous page (note p. 111) is, that so much paid will save the vote of one who, rated to his quota in a larger amount, shall by casualty not have satisfied the whole at the time of election. A similar principle as to the non payment of rates operates to disfranchisement under the "Reform Act."] Ed.

little ; but if he has not been rated to all, though he has paid the whole he is rated to ; or if he has been rated to all, but not paid the whole ; in either case it is necessary, that he shall have made amends by the payment of thirty shillings for the default.

All these distinctions will, I hope, more plainly appear by stating a case on each :—

A—has not been rated to all which he is liable unto, but he has paid all he is rated unto, amounting to thirty shillings for the whole.

GOOD.

B—has been rated to all, but paid only to some, yet such payment amounts to thirty shillings.

GOOD.

C—has not been rated to all, nor paid to some to the amount of thirty shillings.

BAD.

D—has been rated to all, but not paid all, nor to some to the amount of thirty shillings.

BAD.

E—has been rated to all, and paid all, but

nevertheless the whole does not amount to thirty shillings.

GOOD.*

It is necessary now, upon this point, to take more particular notice of two rates to which the citizens have been made liable by subsequent statutes, I mean, that for enlightening the streets of London, by the 9th of George II. chap. 20, and that for regulating the watch, by the 10th of George II. chap. 22. In both which there are disabling clauses,† specially directing, "That every freeman, being liable to the said rates and assessments, and neglecting and refusing, or desiring to be excused from the payment of the same, shall be under the like incapacity of voting, at elections within the said city, as any persons are who do not pay their scot and lot to the several other yearly rates which the citizens of London, inhabiting therein, are liable unto." In the

* [This case has been repeatedly disallowed as the position excepted from the franchise by the Act. It is the very case that would have admitted those, who by their petition declared themselves disfranchised by its operation; and who were intended to be excepted by declaring the right of voting to be in those who shall have paid thirty shillings a year *at least*—Sect. X.] Ed.

† See clause 13, of the lamp act, and clause 10, of the watch act. Appendix, No. XI.

clause relating to this purpose in the last statute for the watch rate, the words (the same being lawfully demanded), are inserted, but that proviso is omitted in the lamp act; however, it is not expressed in either, that the incapacity of voting should proceed from not being rated, but only from the neglect or refusal of payment; for, although a neglect or refusal may imply a demand being previously made, and such demand could only be made in consequence of an assessment, yet it cannot be inferred, from the construction of these statutes taken by themselves, that a voter must at all events be rated to both these taxes; the right of voting therefore will still depend upon the construction of the 11th of George I., reconciled to the direction of these subsequent acts of Parliament: and, by thus taking the meaning and intention of all the statutes together, it seems requisite, that, if a person be rated to the lamp and watch, and the same be demanded, he must pay those taxes at all events, so that, if he has paid thirty shillings in the whole to all the other rates, yet the non-payment to the full of both of these (if he be, I say, charged thereto, and the same be lawfully demanded), must be deemed a disqualification.

The peculiar circumstance therefore, with

respect to the payment of these two rates, must be settled upon the following terms :-

A—has been taxed to the lamp and watch, and all other rates to which he is liable, and has paid to some to the amount of thirty shillings or more ; but, nevertheless he hath not paid to the full he was so charged withal to the lamp and watch.

BAD.*

* [The lamp and watch, and any other rate or rates which may be levied on behalf of the city, are provided for by 11 Geo. I, Sect. 9, which declares a payment to Scot to consist in certain rates then existing, "and to such other annual rates as the Citizens of London *shall hereafter be liable unto.*" The 10th Section also, provides for the franchise in the same terms. The error of the text appears to be in supposing the payment to the Lamp and Watch rates as an additional imposition beyond the requirement of the Statute of Geo. I, in respect of the contribution to Scot ; whereas such cannot be the fact,—those rates only being a part of the liability of a citizen must take the position of the prospective contingency provided for them as other of those liabilities declared to constitute a payment to Scot ; in fact the acts under which they are imposed go no further than to place them in such a position. Indeed the assessments for enlightening the streets and for the nightly watch, were only a more formal provision for a liability which had long previously existed.

Thus, without here going into the history of either, which would carry us back several centuries, it may be sufficient for the argument to observe that, as to the watch rate, it had been provided for by Stat. 2 Will. & Mary,

G 2

B—is not rated to lamp and watch, but he has been rated and paid to the other rates, or some of them, to the amount of thirty shillings.

GOOD.

As this disqualification arises from a refusal to pay, after being rated and a demand made, it is necessary, that he, who makes the de-

cap. 8, and was consequently existing as a part of the Scotting provided for in terms by the Act of Geo. I. The enlightening the streets, although not accomplished by the means of a rate, had also existed for centuries as a personal liability and service to the like result, more properly comprehended by the term *Lot*; and by 2 Will. & Mary, Housekeepers living in streets were to hang out lanterns every night till 12 o'clock, from Michaelmas to Lady Day, under a penalty of two shillings for every default. But all previous regulations were repealed by Act of Common Council, Dec. 18, 1716, which ordered "That all housekeepers whose door or gateway fronts or lies next unto any street, lane or public passage or place of the said city or liberties thereof, shall in every dark night, i. e. every night between the second night after each full moon and the seventh night after each new moon, set or hang out one or more lights with sufficient cotton wicks that shall continue to burn from six o'clock at night until eleven o'clock of the same night, under the penalty of one shilling. And that under the like penalty, the occupiers of houses in every court that faces any public place or passage, shall alternately hang or set such a light on the outside of such doors or gates as shall be next the said public place or passage, *unless the party offending is not charged to the poor, and whose house shall not be of the rent of ten pounds per annum.*"

mand, be sufficiently authorised and empowered to collect ; accordingly the act of the 10th of his late Majesty directs,* that the assessments for payment of the watch shall be collected quarterly by the constables for each precinct, or the beadles of the Ward, as

Thus stood the city regulations for supplying the place of the moon, at the period when the Act of Geo. I, included it as a liability necessary to the franchise, either as Scot or Lot ; and until that wonder of the age, "the new glass lights commonly called or known by the name of *Convex Lights*," with which contemporary writers were so enraptured, were introduced, and a general rate levied in the place of the former inconvenient service. Still however the arrangements were extremely imperfect ; for until the year 1796, the city was lighted by Contractors *who paid to the Corporation £800 per annum for the privilege of doing so and of assessing six shillings per annum* upon every householder who paid to the poor, and whose yearly rental amounted to £10 and upwards ; a reservation however being made, that those householders who chose rather to hang out a candle and lantern than to pay the rate, had the privilege of doing so. It was not until 1744, that the streets were uniformly and perpetually lighted by the means of a compulsory rate. The 9th and the 10th of Geo. II, or the 11th Geo. III, imposed no disabilities as to the franchise that are not to be found in the 14th section of the 11th Geo. I : indeed they refer to that Act with the view of placing the new assessments upon the same terms and conditions by which the previous liability to the same service had been enforced.

There appears some reason for having established the ten pound franchise, when we find by city legislation, tenements of less value, in so many instances, excepted from liabilities to which the right of election was annexed.] Ed.

* Sect. 2.

the Aldermen and Common-Council Men of each Ward shall appoint;* and, in case of the death or refusal of the person so appointed, they may direct any other person in the Ward to collect in his stead, and such other person is bound and empowered by virtue of that order to demand the same; but the lamp act directs,† that the collectors of that duty shall be elected yearly at the Wardmotes, and no provision is made, in case such collectors shall refuse, or shall happen to die in any part of the year, after being so chosen; and therefore a bare nomination or appointment of another in his stead is not here sufficient, nor can there be, according to the strictness of the words, a new election of another at any time, but on the expiration of the year for which the former was chosen; and who are so to be chosen in each Ward, by the literal construction of this clause, on St. Thomas's day only, and therefore the disqualification, with regard to the nonpayment of the lamp duty, must be left on this latitude, so as to arise only from the refusal to one chosen on that day to collect the same; and from hence appears the necessity of always choosing two or more persons out of the six, who by the directions of the act are to be annually returned out of the inhabitants of the Ward, to be the lamp col-

* Sect. 4.

† Sect. 9.

lectors for the year ensuing;* and who are reciprocally empowered to collect in any district upon the death or neglect of another; for although they are returned and nominated to serve in any distinct precincts, as before observed, with respect to the election of Common-Council Men; yet, this being done only for the sake of order and regulation, they are in fact properly Ward officers, and their duty is general.

Thus also, when an objection is made for refusing or neglecting to pay any of the other rates whatsoever, it ought to be proved, that a legal demand was made, and that also frequently repeated at a proper time and place; and that the same was always either absolutely denied, or such sham excuses made as were clear indications of a wilful neglect; for it would be hard to urge the objection against one for neglecting to pay at the first call, if it can be proved that he only postponed it to a more convenient opportunity, and the non-payment was owing entirely to the collector's neglect of making another demand.

* Sect. 9. [The lamp duty, by the 11th Geo. III, cap. 29, being consolidated with an assessment to the Scavenger, and a rate for the better paving the City of London and the Liberties thereof, collectors of the "Consolidated Rate," are now annually elected at the Wardmotes upon St. Thomas's Day.] Ed.

And upon this point it may be necessary to inquire, even when the rate appears to be fully satisfied, whether the same was actually paid by him who was charged thereto; for if the person himself that has been rated should have absolutely refused or neglected to discharge his duty therein, and the rates should be afterwards satisfied without any knowledge of his own, but entirely at the expense of a stranger, just at the last extremity, merely perhaps to serve the turn of an election; such payment by another ought not to excuse his neglect, nor remove the deficiency objected against him on that account; for, *when the qualification is not gained by his own submission to his duty, he can have no pretence to the privilege that is annexed to it.*

And therefore the cases, with regard to the neglect or refusal of paying either to the lamp, watch, or any other rate, must be stated and determined according to the *right of the person who makes the demand, and the duty of him who is to answer it*; for example:—

A—, being rated to the lamp, refused payment, because it was not demanded by one who had been legally chosen a collector on St. Thomas's day.

GOOD.

B—, being rated to the watch, refused payment, because it was not demanded by a beadle chosen at a Wardmote; but it was demanded by one who was appointed by the Alderman and his Common-Councilmen in pursuance of the power given for that purpose by the watch act.

BAD.

C—, being rated and frequently called upon, either refused, or made such frivolous excuses as obliged the collector to return him as one neglecting.

BAD.

D—, being once called upon, desired the collector to come again, at a fixed and more convenient time; but the collector never thought fit to make any other demand.

GOOD.*

E—, had refused or neglected to pay his rates, but a stranger, unknown to him,

* [As this position could not be maintained, it would hardly be allowed upon a scrutiny:—A legal demand and *neglect*, if indeed it does not amount to a refusal, is a clear disqualification by the terms of the Act.] Ed.

satisfied the same upon the expectation of a contested election.

BAD.

It is not requisite that he who is in possession of a house, and rated thereto, should prove that he himself discharges on his own account the rates to which it is liable; for probably in some instances the landlord may agree to reimburse him; and it is well known that the clerk of a company, living in the hall of the company, places the charges of the scot to the account of his masters; notwithstanding which, if his name is set down as the person on whom the demand is to be made, he must be deemed as the immediate responsible person, and, in case of neglect or refusal, the assessment must be levied on him and his goods: consequently therefore, *he, who is liable to be punished for any particular disobedience, ought to enjoy the right that is annexed to the compliance with the demand.*

The next material doubt to be here settled, is, with respect to the times in which the rates and payments ought to be made; and the difficulty as to this point is, that the first part of the 10th section provides. "That such householder within the space aforesaid shall have been rated and paid to all, or have paid thirty

shillings a year for the whole ;” which words, within the space aforesaid, that is, within the year before, ought not strictly to imply, that the householder must have been charged to such rates during all such time, but rather that it is sufficient, if he have paid the whole, or thirty shillings at least for the whole of what the house is charged withal, although he himself commenced being rated thereto only within such time ; so that it is not requisite for one to have been charged to every preceding quarterly or half-yearly assessment ; for it may happen in many instances, that the name of a householder cannot be entered in the common rate-books until a half, or even a year after he has become an inhabitant ; in which case he must nevertheless be deemed a purchaser of his qualification, if he have paid all or to the amount of thirty shillings for the whole, although he has been rated never so little a while ; because the privilege of a vote is granted, first, for having lived twelve months complete within the Ward, and, in the next place, for having also, *during that time*, contributed his scot to the common expense ; for which reason it is enough, if he at some time or other, within that space, has been rated, and then paid so much as shall be deemed his scot, that is, *the satisfaction due*

for the whole year's assessment ; and therefore, since the rate-books are made out only at particular allotted times, when the names of the new inhabitants are inserted in the room of the former occupiers of the houses ; and since for that reason it may be impossible for a new comer to be set down immediately upon his first entrance into possession ; the construction of this part of the clause must be suited to the common practice and the necessity of the case, and be admitted in the following manner :—

A—entered into possession of a house, and commenced being an inhabitant of the Ward twelve months ago, and has paid, within that time, all that the house was liable unto, or at least thirty shillings for the whole ; but he was not rated or charged until about six months past, or is not as yet rated by his own name.

GOOD.

Every inhabitant however ought to be careful that he be charged in due time, and to the full of what he is liable unto ; for if he be not rated, or rated too little, that is, as a tenant of a house under ten pounds a year, when he actually pays more rent ; he then has as good

a foundation for appealing, as if he had been rated too high ; nay, there is an express direction in the 13th clause of the statute, for him to appeal to the Court of Aldermen, for any breach or neglect of duty committed by any officer relating to the rates and assessments ;* for it may happen, that the name of a person may be wrongfully charged, or accidentally

* [It would be an agreeable variety from the usual routine, for a Citizen to appeal to the Court of Aldermen to *raise* the amount of his assessment. It however may not be uninteresting to remark that even by the Scotting consequent upon the vast and expensive improvements of the present day, *a ten pound householder would barely be entitled to the franchise* under the thirty shillings minimum clause ; as thus, the

Church Rate (estimated average) 1s. in the pound	10	0
Poor Rate (actual assessment) 7d.	„	5 10
Watch Rate (estimated average) 6d.	„	5 0
Consolidated Rate (actual assessment) 7d.	„	5 10
Sewer Rate (actual assessment) 4d.	„	3 4
		1 10 0

This result must operate to convince the Citizens of London of the economy and high integrity with which the public business of the city is now conducted ; and it will no less indicate the just cause of complaint and dissatisfaction which the Citizens of 1725, had against a measure that raised a qualification for the franchise to a sum which the rate of Scotting at the present day would barely confer—at a period too, when many of the present *Scots* were performed by personal service and came under the more proper denomination of *Lots*.] Ed.

omitted, and so subject his right of voting to be called in question ; but in such case, if the party shall prove, by sufficient witnesses, that he hath been the occupier of a house chargeable to that duty, and thought himself rated thereto, and was always ready to pay all demands that were made, then surely *the omission in the collector's book should not affect him, but he ought to be allowed to bring evidence against it, to prove, that the deficiency did not arise from his own neglect or refusal.*

This however must wholly depend upon the nature of the proof, and the circumstance of the case ; for on the other hand, if one be apprised that he is not rated at all, or not to his full proportion, and chooses to take no notice of it on purpose to save the payment, he who would thus keep himself from bearing an equal burden with his neighbours, ought to be deprived from enjoying an equal privilege.

Thus also, with regard to the payment of the rates, within the space aforesaid, it ought to be inquired, whether the scot of the person, so rated in due time, was also paid within the due time, that is, before the election ; for a subsequent discharge of the duties, after the declaration made on view of hands, though before the poll or scrutiny, will no more add a qualification, than a freedom of the City taken

up after such election, as before explained. To prevent therefore such after payments being clandestinely made, it will always be proper, so soon as the election is declared, and a poll demanded, and a scrutiny likely to ensue, *that the rate-books be all ordered into the hands of the presiding officer*, or some other indifferent person, who should be obliged not to suffer any additions or alterations to be made, and to which none but the scrutineers on both sides should have recourse to settle their objections thereby ; and the right of each voter, with respect of his being charged, or having paid his rates, should be determined by the evidence of those books in the state and condition they appeared immediately before the election was first declared, with an exception or allowance, as I have just before said, to those who can by other witnesses prove the discharge of their duty, in case it should happen through negligence of the collector, that their names be not properly set down, nor their payments recorded by a sufficient number of marks usually made to signify the same.

But here the 12th section of the statute may properly enough be connected to this, as it comes in by way of exception to it, and which provides, "That nothing from hence

shall be construed to oblige persons to pay any scot, or bear any lot, from the doing of which they were exempted by act of Parliament, charter, or writ or privilege:" all those, therefore, who were exempted as above from serving their lot to all Ward offices, and amongst the rest to that of Watch and Ward,* presumed formerly so far on that pretence, as

* [The duties of Watch and Ward were a part of the ancient Leet service which every inhabitant admitted into frankpledge, was bound to perform for the defence of the district, as well as mutual protection and internal order: and it hence became a portion of the *Lot* which every citizen was sworn to bear. The institution of a regulation of this kind is most probably coeval with aggression and the earliest formation of civil society. It was the object of the policy of Alfred, when he divided the country into shires, hundreds and tythings; and the same policy was confirmed by Athelstan, when certain resolutions were entered into by the Bishops and Reves (*Episcopi et Præfecti*) belonging to the City of London and the free gilds over which they presided, for mutual defence against plunder and violence; which resolutions all were sworn to obey, (*Wilk. LL. Ang. Sax.* p. 65.) Edward the Confessor directs that Ward shall be *lawfully* and truly kept, (*Ib.* 205) And William the Norman, in confirming the laws of the Confessor, strictly enjoins the observance of the Nightly Watch in every City, Borough, Castle, Hundred, and Wapentake, throughout the kingdom, (*Ib.* 228.)

The term Watch is properly applicable to the night, from the teutonic *wacht* or *wacta*, (*Vigilia*); as Ward, *Warda*, *Custodia*, (or *garde* in fr. law) referred to the day,—the one commencing at the termination of the other. As a pecuniary contribution towards this service, probably

to insist upon their not paying their scot to the rates which were made in lieu of such personal service; but, since the act of the 10th of his late Majesty has discharged that

the *Wardpeny* mentioned in Domesday, is the earliest known ancestor of our present Watch Rate.

In 1387, the duties of Watch and Ward were embraced in a general Police Act, to which is commonly, though incorrectly, referred the origin of the system. The statute of Winchester (13 Edw. I.) sets forth with declaring that "from daie to day robberies, murders, burning of houses, and theft, be more often used than thei have been heretofore, and felons can not be attainted by the oath of jurors which had rather suffer straungers to be robbed, and so passe without payne than to indite the offendours, of whome great part be folke of the same county, or at the lest, if offendours be of another county, *the receivers be of places nere.*" This does not say much for the "grand assize," and in order to "abate the power of the felons," it is directed that henceforth every county shall be so well kept, that immediately upon such robberies and felonies committed, fresh sulte be made from towne to towne and from county to county.

As a seasonable check upon the vigilance of all good men, the second clause declares counties shall be liable for the escape of felons committing depredations therein. And to our immediate purpose, the third section provides "that in the greate townes beinge walled, the gates shal be closed from the sonne resting until the sonne rysing, and that no man do lodge in suburbs nor in any place out of the towne from ix of the clocke untill daye without his hoste will answere for him, and the bailiffes of townes every weke or at ye leaste every xv daie shal make inquiry of all persons beyng lodged in the suburbs or places of the townes. And if thei do find any that have

former tax, and imposed a new one for the regulation of the nightly watch within the City, they and all others, even constables who do the duty, are rated, and must pay to

lodged or receyved any straungers or suspicious persons agaynste the peace, the bailiffes shall doe ryghte therein. And the king commaundeth that from hensforth all townes *be kept as it hath ben used in times passed*, that is to witte, from the feast of Ascension unto Mighelmas in every Citie, vi men shall kepe at every gate, in every boroughe xii men, every towne vi or liii, accordinge to the numbre of inhabitauntes of the towne, and shal watch the towne al night fro' the son resting vnto the son rising. And if any straunger do passe by the', he shal be arrested vnto morning. And if no suspicion be found he shal goe quite, and if they finde cause of suspicion they shal forthwith deliver him to the sheriffe to be kept sauffy vntil acquitted in due maner. And if thei will not obey the arrest thei shall levie hue and orie vpon them, and such as keep the towne shal folowe with hue and crie with al the towne and the townes nere, and so from towne to towne vntil that thei be taken."

The 5th clause orders the clearance of all underwood within CC. feet of the highway ; and the 6th section provides for the inspectorship of the force, and the weapons with which to "keep the peace."

"And further it is comaunded, that every man have in his house harneis for to kepe the peace after the auncient assise, that is for to say every man betwixt fiftene yeres of age and xl yeres shall be assessed and sworne to armour accordinge to the quantitie of their lands and goods, that is to wit, from fiftene li. lands and goodes xl markes, that is to witte an hawberke, a brest plate of yron, a sworde, a knife, and an horse. And from x li. of landes and xx markes goodes, a hawberke, a brest plate of yron, a sworde

the charge of it, equally as to all other taxes ; for, if a constable be so rated, and does not pay, his personal service can be no excuse, because keeping of watch is now become a

and a knyfe, and from xl. s. lande and more, unto C. s. of lande, a sworde, a bowe and arrowes, and a knyfe. And he that hath lesse than xl. s. yerely shall bee sworne to kepe gisarmes, kniues, & other lesse weapons. And he that hath lesse than xx markes in goodes shall haue swordes, kniues and other less weapons, and all other that maye shal haue bowes and arrowes out of ye foreste, and in the foreste bowes and boltes. And that viewe of armour be made euery yere two times. And in al hundredes and fraunchises two Constables shal be chosen to make the view of armour, and the Constables aforesaide shal present before justices assigned suche defautes as they doe see in the countrey aboute armour, and of the suites of townes and of high waies."

In times of danger, the watch was augmented for the occasion ; and in 1321, during the troubles of Edward the Second's reign, Fabian relates, that in order to keep the peace of the city, the Mayor caused daily a thousand men, well armed, to watch in the several wards and at the gates of the city, which began at four o'Clock in the morning and so continued till six at night, when they were relieved by the like number for the night watch. Two Aldermen rode nightly about the city, attended with a number of officers to see the watch well kept. The gates were shut at nine o'Clock and opened at seven ; and every citizen was ordered to have his harness ready on the least warning.

Stow, remarks that by ancient custom, all persons inhabitants, being householders, whether freemen or not, were bound to keep watch within their own Ward by night

duty over and above the paying for the regulation of it.

It is customary indeed in some Wards not to charge such a person to that rate, but the

or to get a fit person to do it for them, for the preservation of the King's peace and for arresting night walkers.

Every Constable is head of the Watch, and he with a Beadle is bound to be present. "To which government of the nightly watches," continues the Chronicler, "there is belonging to each Ward, a bellman, who, especially in the long nights, goeth through the streets and lanes ringing a bell; and when his bell ceaseth he salutes his masters and mistresses with some rhimes suitable to the festivals and seasons of the year; and bids them *look to their lights*. The beginning of which custom seems to be in the reign of Queen Mary, in the month of January, 1556; and set up in Cordwainer's-street Ward, by Alderman Draper, Alderman of the Ward. Then and there, (as I find by an old journal) one began to go all night with a bell, and at every lane's end and at the Ward's end, *gave warning of fire and candle, and to help the poor, and pray for the dead*." Strype's Ed. b. v. p. 393.

The view of arms and armour appointed under the statute of Winchester, appears, in the City of London, to have grown into a splendid pageant yearly on the vigil of St. John the Baptist and on that of St. Peter and St. Paul. They assembled to the number of 2000 horse and foot dressed in the most costly manner, each endeavouring to outvie his neighbour in the brilliancy of trappings and accoutrements; the Lord Mayor himself, mounted on a charger richly trapped, and attended by the Sheriffs, heading the cavalcade. On the eve of St. John, 1510, Henry VIII, came to the city in disguise of a yeoman of his guard; and on the eve of St. Peter, brought his queen

word constable is written opposite to his name in the collector's book, in the room of the sum to which he ought to be rated, in order to signify an excuse on the account of the merit

and court into Cheapside to witness the pageant. (*Noorthouck*, 112.) *Beaumont* and *Fletcher* refer to this ceremony by the mouth of one of their burlesque city heroes,—

“—My valiant love will batter down
Millions of constables; and put to flight
E'en that great watch at Midsummer day at night.”

Knight of the Burning Pestle.

In the summer of 1569, this pompous cavalcade was laid aside as an useless expense, and a stated watch appointed at the charge of each Ward. The proportional levy by act of Common Council, appears to have raised a nightly force of 997 men.

In the disturbed time of Charles I, the efficiency of the City Watch claimed particular attention, and in 1643, the levy upon the Wards and precincts amounted to 1097 men on duty nightly; to defray the incidental charges whereof, a Watch Rate was raised upon the ancient assessment by fifteenths, amounting in the whole to 94½ fifteenths for the 34 wards and precincts of the city.

In 1663, Sir John Robinson, Mayor, the order for the nightly watch was, that the Alderman in each Ward should appoint one Constable and the full number of the inhabitants proportioned to the Ward to do duty for the night; and from thence to go forward in an orderly manner, and appoint for the next night one other Constable of the Ward, and the like number of inhabitants adjoining unto those who watched the night before. The number at this time on nightly duty appears to have been 1157 men for the wards and precincts.

In 1702, An Act of Common Council for regulating the nightly watch, provided, that for the future the number

of his serving the office ; but even this I doubt cannot in strictness be admitted as a plea in mitigation, or excuse of non-payment ; for every one is in general to be rated to all the

should be reduced to 583 "strong and able bodied men" to watch every night ; thus regulated :

The Deputy and Common Council of every Ward were empowered to oblige every person occupying any house, shop or warehouse therein, either to watch in person or to pay for an able-bodied man to be appointed in his stead. The said watchman to be provided with lantern and candle and well and sufficiently armed with halberts, one Constable and the appointed number of watchmen in each Ward to keep watch every night.

Of this reduced guard, a contemporary observes, "that the number is sufficient, but the management of the business might doubtless be bettered for the ease and safety of the inhabitants. I shall not pretend to dictate to governors or magistrates," continues the writer, "but only query, whether it would not much less disturb sick families and *spoil fewer doors* by their pushing a door with their hand than knocking so impudently with their staves, and whether their going their rounds at uncertain times would not be more safe *than at each hour*."—*New View of Lond.* 1706.

In 1736, the statute 10 Geo. II, cap. 22, "for the better regulating the nightly watch and Bedels within the city of London and Liberties thereof," was obtained, "the main object of which," says the official document hereinafter quoted, "was to afford further facilities in levying and collecting rates. The first order under this Act was passed by the Common Council in 1737, and nearly similar orders were continued to be passed yearly by that Court till the year 1827, when the subject underwent a very attentive and careful revision." Not indeed without

taxes which his fellow-citizens are liable unto without any exception to this or that office : however, if a constable's not being rated is owing to the duty he is to perform, according

reason, for if report be true, the "Watch" of that day amply shared the quiet attributes by which *Shakspeare* has immortalized their ancestors :—

Dogberry. You shall also make no noise in the streets : for, for the watch to babble and talk is most intolerable, and not to be endured.

Watch. We will rather *sleep* than talk : *we know what belongs to a watch.*

Dogb. Why, you speak like an ancient and most quite watchman : for I cannot see how sleeping should offend ; only, have a care that your bills be not stolen.

Much Ado about Nothing, act 3, sc. 3.

As to the state of things immediately before revision, a contemporary journalist, shrewdly remarked, that "had a council of thieves been consulted, the regulations of the watch could not have been better contrived for their accommodation. The coats of the Watchmen are made as large and of as white cloth as possible, to enable the thieves to discern their approach at the greatest distance ; and that there may be no mistake, the lantern is added. They are fixed at stations, that thieves, by knowing where they are, may infer where they are not, and do their best ; the interval of half an hour in going the rounds is just such as to give expert thieves a fair opportunity of getting a moderate booty from a house. That they may not be taken by surprise, they have the same accommodation in the cry of the time that was prayed for by the rats, when they asked that bells might be hung about the necks of the cats ; and lastly, that the burglars may have all

to the agreement and general custom of the precinct, such an excuse, as it takes off the imputation of his own neglect and refusal, may be admitted; but this is not to be ex-

possible chance, even if surprised, the watchmen mostly chosen are old, infirm and impotent." *Times*, Oct. 1827.

In the following year, however, the Committee of the House of Commons upon the Police of the Metropolis, bore testimony, in reference to the police and watch of the City, "that they have reason to believe material improvements have recently been made in the general management of those establishments."

By an official statement respecting the Police and Watch of the City of London, dated Guildhall, March, 1839, it appears that the ancient duty of Warding the city had been revived in the year 1832, when "in addition to the nightly Watch, the Marshals, Marshalsmen, and the Ward Constables, the Court of Aldermen established a day Police force, consisting of one chief officer, a superintendent, three inspectors, ten serjeants, and 85 police constables." This improvement might be supposed all but perfection, either from an abashed self-denial on the part of the professional practitioners of burglary, or the superior working of a system which rivaled the institution of our Saxon Alfred; for the report states, "the security of the inhabitants of the city was so effectually promoted, that in the year 1836, *three* cases of burglary only occurred; in the year 1837, *not one*; and in the year 1838 *two only*." Not content however with this state of primitive security, the corporation "resolved to form a new and *efficient* establishment for the protection of the inhabitants of the city by day and by night, consisting of one Superintendent or chief officer, 12 Inspectors, 50 Serjeants and 438 Constables or Watchmen." To the happy results of this

tended so far as to admit the rate on account of one's being only nominally chosen, whilst he hires another to do the duty in his stead ; for the excuse cannot in conscience be allowed on any other consideration than that of a real personal service ; the objections therefore proposed on this head must be answered as follows :—

A— was rated to the watch, but refused to pay it, on account that he had personally served the office of constable for that

establishment, which came into operation the 25th of December, 1838, having previously advanced to the superlative of arrangements, there seems to be no remaining degree of comparison, unless it be the immaculate virtue of our sister land under the felicitous rule of Brien the Brave. (*Vide Warner's Ireland*, v. 1, b. 10, and *Moore's Mel.*)

Under this double development of a perfectionated police, "*whose duties are assimilated to those of the metropolitan force*, with express directions to co-operate with that body on all occasions," may we at length repose in security,—morphiated by the police pathos of our worthy Commissioner, Harvey,—"*that the City Police is not a mercenary or military force*, raised to be transferred to distant scenes upon political services ; but it is a force raised expressly and at their own charge, to guard our Citizens from danger, and their property from plunder,—to be ready at all times to *throw the staff of our Saxon ancestors around the helplessness of infancy and the decrepitude of age* !—Farewell to Southwark, Dec. 1839.] Ed.

H

year; but it did not appear, that the parish ever excused the rate on that account.

BAD.

B— was rated to the watch, and refused for the same reason as above, and proved, that it was the constant custom of his precinct to admit of service, in lieu of payment to that particular rate.

GOOD.

C— was nominally chosen constable, and procured another to serve in his room, and yet, on the pretence of such custom as above, refused payment of the watch rate.

BAD.*

* [Upon a superficial view, the argument would appear good, that the payment of the Watch Rate could be no excuse from serving the office of Constable, to which one might be elected by the voice of his fellow men of the Ward at their annual Mote, inasmuch as the performance of one liability can be no release from a liability to another; if it were so, to draw a distinction between a personal and a *pocket* service (as in case C) would be a great injustice. The merits of the question however, rest upon a different foundation than "the custom of some wards" or the "pretence of such custom;" for by the 10th of Geo. II, cap. 23, above cited, being "an Act for the better regulating the nightly Watch and Bedels within the City of London

There may be other particular circumstances which may be considered in such an equitable light as to excuse a deficiency in one point,

and the Liberties thereof," it is expressly declared "that no person or persons who shall be rated and assessed to pay to any rate and assessment to be made in pursuance of this act, *shall be liable to any Watch and Ward by virtue of the Statute of Winchester, made in the 13th year of king Edward the 1st, or any other subsequent Statutes relating thereto, but shall be and are hereby discharged of and from the same.*" A similar clause was also inserted in cap. 25 of the same session of Parliament "for regulating the nightly watch and Bedels within the Liberty of Saffron Hill, Hatton Garden and Ely Rents." It might possibly have been an oversight in the composition of these Acts of Parliament, that the elective office of Constable *was an essential component of the "Watch and Ward" under the Statute of Winchester*, as well as of subsequent statutes in the same behalf; and the city regulations founded thereon; but nevertheless the exemption appears grounded upon good reason, inasmuch as it would be inconvenient for one to serve in the ranks and at the same time to have a command; so neither ought the liability in any shape to exist. As the office of Ward Constable is now consigned to history, the interest of the question is gone with it; otherwise there can be no doubt,
—1. That the payment of the watch rate was by express enactment, a clear exemption from the service of Constable and *vice versa*, although a contribution or rate to the same purpose had existed by custom from the time of the Saxons.—2. That such exemption being provided for by the 12th section of the 11th Geo. I, it must result, that the cases, A. B, & C, as above laid down, *are all good votes.*] Ed.

upon proof of a compliance in another, as where a person shall have neglected or refused the payment of the rates laid on a tenement that lies empty and unoccupied, whilst he himself lives in another house within the Ward, for which he has also been charged and readily paid; in which case the vote which he gave must be supposed to be claimed in the right of the house that has satisfied all the demands, and, as to the other, he ought to be excused as one not liable.

Thus the chief weight of an objection must in all cases lie against one who is liable, and yet neglects or refuses to perform any particular branch of his duty upon a lawful and proper demand; and from hence we must proceed to the consideration of the next qualification necessary to entitle one to a vote; for a householder, being rated, and paying scot, is also to perform the further obligation of "bearing his lot, when required." Bearing of lot, not being explained in the statute,* is

* [Sect. 7. see Appendix, No. V. [Lot, from the Saxon *laot*, although it did imply a personal liability and service, was not so strictly interpreted as to prevent a pecuniary substitute; and at the present day, by the increase of wealth and its accompaniments, the ancient Lots of an onerous nature have nearly all been converted into *Scots*; although the term will equally imply to every elec-

generally understood to signify the serving of all, or some of the Ward offices; such as constable,* lamp collector, scavenger, inquest-

tive office to which a citizen is liable, from the Lord Mayor to the Common-Councillmen. With these exceptions, the Wardmote Inquest jury, (once of the most potent authority under the customary law of the city, for the suppression of abuses, and the summary administration of local justice, —now reduced to the almost nominal duty of an annual presentment and the supererogatory benevolence of alms-gathering,) is the only existing remnant of the ancient Lotting; for the "Collectorship" exists by statute; and by the same authority is preserved to us a shadow of the "Scavenger,"—which enjoins "that all persons do cause the footway along the front of their respective houses to be scraped, swept and cleansed before the hour of ten o'Clock in the forenoon, under a penalty of ten shillings for every omission.*)" Ed.

* [The title of this honorable and extinct Ward officer, is said to be derived from the Saxon, *Koning-trapel*, and to signify the support of the king or his authority. Sir Henry Spelman and Dr. Cowel, however, are inclined to derive the name with the office, through the French, from the Roman empire, where the *comes stabuli* was an officer who regulated matters of chivalry; as did also the Great Constable of France and the Lord High Constable of England. From this high office, says Lambard, is the more familiar representative of majesty drawn, "and is, as it were, a very finger of that hand." Indeed, upon a limited sphere, a similar duty was annexed to the more modern office by the statute of Winchester, which directs that for the better keeping the peace two constables in every hundred and franchise, shall inspect all matters relating to *arms and armour*.

man, &c. And the proviso (when required), must mean, when lawfully elected thereto at

This officer, appointed at the Court Leet of the franchise or hundred over which he presided, afterwards obtained the distinction of "high Constable," as a difference from the petty constables or subordinate officers in every town and parish, instituted, says Spelman, about the time of Edw. III, (*Gloss.* 148.) On the contrary, in treating of the power of Constables, Lord Coke says, they were created by the 13th Edw. I, "with no more authority than that act provided and subsequent Acts have given to them." (4 *Inst.* 267.) These petty constables, says Sir William Blackstone, have two offices united in them; the one antient, the other modern. Their antient office is that of *headborough, tithingman or borsholder*, who are as antient as the time of king Alfred; and were afterwards made use of to serve as petty constables, yet not so generally, but that in many places they still continue distinct offices; their modern office is that of constable merely, (*b. i.* 356.) One of their principal duties, arising from the *Statute of Winchester which appoints them*, is to keep Watch and Ward in their respective jurisdictions. (*Ib.*)

To these learned authorities it remains to be added, that the 5th Edw. III, c. 14, directed against "Roberdeamen, Wastes, and Drawlatches," confirms the statute of Winchester, and directs that Constables may arrest and hold in ward suspected persons by day and by night; but it contains nothing to indicate a first appointment of the executive of the law. Neither can the Statute of Winchester be taken as the original creation of the officers whose duties are enjoined in the performance of a still earlier institution; for in commanding the strict observance of Watch and Ward, the act of Edw. I, refers to it *then* as, in fact it was, an antient duty; (*see note p.* 136,) nor does the sixth section, in regard to the view of arms

a Wardmote held for that purpose; from whence it must be understood, that although

appear to refer to any such officer at that time as "high constable" or headborough, &c. for it is specifically declared that two constables in every hundred and franchise shall be appointed to the service required.

The transition of duty from the superior to the lesser officer, is not more apparent probably than in the *hue and cry*, also a part of the business of the constable, for the apprehension of offenders, which although it was in practice among the Normans (*Grand Court. c. 54*) may yet be traced to our own Saxon institutions. By a law of Ina (*LL. Inæ, c. 36*), whoever suffered a thief to escape was to pay the *were* or *forgyld* of the offender; and if he were an alderman, he was to lose his office. Canute also enjoined (*LL. Can. 28*), that whoever suffered a thief to escape *abeque clamore*, i. e. without making *hutesum et clamorem* or hue and cry with horn and voice, was to suffer the punishment of the thief, if he failed to purge himself of the charge. According to *Bracton*, the practice was for the party robbed or the company of one murdered or robbed, to come to the Constable of the next town, and will him to raise Hlew and Crie or make pursuit after the offender, describing the party and shewing as near as he could, which way he had gone: the constable ought then forthwith to call upon the parish for aid in seeking the felon; and if he were not found there, then to give the next constable warning, and he the next, until the offender should be apprehended; or at the least until he should be thus pursued to the sea side. (*lib. 3.*)

This duty, which in the origin appertained to that officer, who in after times obtained the distinction of "*high Constable*," is thence found in the possession of the lesser officer—even to our own day, when the Constable may call upon bystanders in the Queen's name, to assist in the pur-

one is obliged to pay his scot annually, yet it is not requisite, that he should have borne his

suit and apprehension of an offender. It will hence fairly arise, that by whatever denomination the officer may have been known, still his office existed at a period coeval with his required duties; especially when we find those duties enjoined in terms which indicate a previous existence, and by no means sufficiently explicit for an original creation: consequently, that the high constable, superseding in part the ancient officer, is the more recent appointment,—the exact contrary of the position of the learned authority before quoted. That this is the correct state of the case, is particularly observable in the *Statutum Civitatis Londani*, of the same date as the Statute of Winchester, (13 Edw. I.,) being, “Articles which our lord the king doth command to be well kept in his City of London, for the keeping and maintaining the peace.” In this statute, although the regulations of police are strictly enjoined in respect of duties known as those of the Ward Constable, the execution of them is left to the previously existing powers, without the particularization of any; so that the duties required, subordinate and otherwise, must have been perfectly familiar to some parties on whom they devolved as a matter of course; and on whom so probably as they who are subsequently found invested with the execution of them?

It is known that the City of London, by Charter, preserved inviolate her institutions at the Norman Conquest; and the guilds, aldermanries or wards of the city, with their internal regulations, as described in the earliest known records of Wardmote proceedings, were identical with the government of the hundreds under the institutions of Alfred; (3 *Inst. c.* 69. *Lib. Alb.* 9); and among them, the hue and cry from Ward to Ward, only completed the exact similitude. To our own time have been preserved,

lot in any particular ; because this is a conditional duty to be performed only when re-

obsolete remains of the institutions of those early days, and among them, the elective office of Constable, did not perhaps, more than some others, by the change of ages, outlive its original importance and utility.

The Ward Constable of London, nominated by his precinct, and elected by his fellows in Wardmote, was the genuine representative of the Saxon borsholder, which, as Dr. Blackstone has observed, became first engrafted with and then merged in the modified office. As head of the Watch, the Constable is found in the command of his district, invested with the power of summoning his neighbours to their routine of duty, or of finding a substitute at their charge and cost, according to the custom of the city ; and at a still later period, having the collection of the Watch rate within his precinct. He had moreover other duties, such as to make presentment to the Mayor of defaults relating to the ordinances of the city ; to certify once a month to the Mayor's Court, the names and surnames of all freemen deceased, and also of the Children of such freemen being Orphans [vide note, p. 109.] And by the Articles of the Wardmote Inquest, Constables were to certify the name, surname, place of dwelling, possession, and trade of every person, who had newly come to inhabit in their precincts, and to keep a roll thereof ; in order to which, they were to make enquiry at least once a month into what persons had come to lodge and sojourn there ; and if they found by their own confessions, or the record of the Aldermen's books, that such new comers had been ejected from any other Ward for bad living or any other misdemeanour, and refused to find sureties for their good behaviour, warning was to be given to their landlords that they depart, or to be imprisoned on refusal, and the landlords fined a year's rent. (*Calth. Rep.* 129, 138.) Upon

quired, which of some may never be demanded, and for which others are allowed to

being chosen into the office, each Constable was required to place over his door the King's arms and the arms of the City, to signify that a Constable lived there.

In process of time, from a general improvement of the social state, the representative of majesty itself came to be performed by deputy or commuted for a fine, and hence may be dated his downfall and degradation. The butt and jest of the Dramatist was a *substitute* :—

Escalus. Come hither, master Elbow; how long have you been in this place of Constable?

Elbow. Seven years and a half, sir.

Escal. Alas! it hath been great pains to you! They do you wrong to put you so oft upon't: Are there no men in your ward sufficient to serve it?

Elb. Faith sir, few of any wit in such matters: as they are chosen, they are glad to choose me for them, I do it for some piece of money; and go through with all.

Measure for Measure, Act 2. sc. 1.

The office must indeed have fallen into a deplorable state of disrepute when it became dangerous that Constables of the peace should be entrusted with a knowledge of their duties; an anomalous position, however, which a learned commentator adopted when he found himself under the necessity of observing that, "of the extent of their powers, considering what manner of men are for the most part put into these offices, it is perhaps very well that they are generally kept in ignorance."! (*Bl. Com. b. 1. 356.*)

Strange to say, the observation of Sir William Blackstone will bear a retrospection of 200 years; for even as the antient view of arms had been abolished as an useless foolery, the efficiency of the constable had decayed with

pay a fine in full consideration for all pri-

the romance of its pseudo-chivalry, to the buffoonery and decrepitude of the pantaloons:—

Dull. I myself reprehend his own person, for I am his grace's tharborough.* *Love's Lab. Lost*, act 1. sc. 1.

The ancient form and qualification of appointment however were still preserved—and *Dogberry* though "he hath had losses," was still a *householder*. Nor is the satire upon the officer less just than his paraphrase of the ancient nightly charge:—

Dogberry. Come hither neighbour Seacoal; - - - you are thought here to be the most senseless and fit man for the constable of the watch; therefore bear you the lantern: this is your charge; you shall comprehend all vagrom men; you are to bid any man stand in the prince's name.

Watch. How if he will not stand?

Dogb. Why then take no note of him, but let him go; and presently call the rest of the watch together, and thank god you are rid of a knave.

Verges. If he will not stand when he is bidden, he is none of the prince's subject.

Dogb. True, and they are to meddle with none but the prince's subjects.—Well, you are to call at all the ale houses, and bid those that are drunk get them to bed.

Watch. How if they will not?

Dogb. Why then let them alone till they are sober; if they make you not then the better answer, you may say, they are not the men you took them for.

Watch. Well, sir.

Dogb. If you meet a thief you may suspect him by virtue of your office, to be no true man; and for such kind of men, the less you meddle or make with them, why the more is for your honesty.

* Tharborough, Constable.

vileges that may arise by personal service;

Watch. If we know him to be a thief shall we not lay hands on him?

Dogb. Truly by your office you may; but I think, they that touch pitch will be defiled: the most peaceable way for you, if you do take a thief, is to let him shew himself what he is, and steal out of your company. This is the end of your charge, you constable, are to present the prince's own person: if you meet the prince in the night you may stay him.

Verg. Nay, ly'r lady, that I think he cannot.

Dogb. Five shillings to one on't with any man that knows the statutes, he may stay him; marry not without the prince be willing; for indeed, the watch ought to offend no man; and it is an offence to stay any man against his will.

Much Ado about Nothing, act 3. sc. 3.

The Dramatists of the succeeding age, in embodying the manners of the day, are rich in ridicule of the appointments of police. And although under such a lash, little hope of revival might be entertained, yet the various Acts of Parliament and the City regulations founded on them, which from time to time have regulated the nightly watch, also attempted to revive the efficiency of the Saxon officer. But his occupation was gone:—instead of directing the nightly watch, he was shorn even of the glory of his “suspected” prototype. His hours of duty were strictly ordered, and Superintendents appointed to look after him and report him at his post. By the order of his antient duty, he had been required to perambulate the boundary of his district “at least twice in the night;”—he was now restrained to wear away his tedious hours, cribbed in his official chair, lest in lieu of apprehending wasters and drawlatches, he might himself steal home to bed. Such were his latter days, and the fatal 25th day of December, 1838, which

and, if such usual fine be paid down upon nomination, or after election, it is admitted to

ushered in the "assimilated force,"—abolished for ever the antient elective Ward officer,—the independent and unpaid protector of our early citizens; and crumbled the rotten staff of the Saxon never to be restored. A few words on the badge of his office, and we have done.

Of the "*Staff of the Saxon*," the word is its own etymon, (Sax. *stæf*;) and as an insignia of office, is referrible to times when education had made small inroads upon the general ignorance, and required a visible sign without spelling. It was then the token of the officer and the warrant of his authority—the diminutive of the Mace; which in the City of London represented the dignity of the Reve and Prefect, and does still that of the Mayor. Mr. Brunet, in treating of the emblematical devices of the City Arms (*Regal Armorie*, pp. 99, 155,) traces the Mace to the club or symbol of Hercules, sacred to Mercury; which made of olive wood, was introduced into Roman Britain (B. C. 44,) not more as a distinguishing emblem of the power of the Roman governor, than the instrument of the execution of those convicts and slaves who were not to be honored with death by the glave of Themis; and this use of the mace will solve the question of Mr. Norton (*Com. on London*) as to the "forcible arrest" of Wat Tyler with that doubly-invested instrument—for it was not only the representative of authority, but carried also the power of executing its decrees. "How," asks Mr. Norton, "came the Mace into the hand of the Mayor? There is little doubt that before Mace-bearers were appointed, the hand of the functionary was the proper place for the insignia of his office, with the same propriety that the Earl Marshall and the Lord High Constable still bear their official staves. It is not improbably attributable to the ancient use of the Mace, that the club became for cen-

be the same as if the service itself had been performed;* or if one begs to be excused only for awhile on account of some present inconvenience, and gives assurance of his intention and readiness to serve at another time, such request to decline only to a farther day, being granted and allowed by the electors, ought not to be deemed a neglect or refusal to serve; so that the only circumstance that can disqualify a person in this case, is the proof of an absolute refusal, or wilful neglect to exe-

turies the weapon offensive and defensive of the Londoners, and the cry of 'Clubs, Clubs,' the rallying shout as well for tumult as any other public 'demonstration.' The long staff of the Constable and of the Parish *Magog*, is probably the genuine Saxon Reve-pole (also employed as a tally in the collection of manorial dues to the lord) which in ancient cities and boroughs is still commonly affixed to the door post of the Mayor or Borough-reve during the period of his office, as a public notification of his residence and the representative power of that functionary.

The metaphor of our worthy city police Commissioner as to the circumclusion of the Saxon weapon, which has been visited with the "oyster knife" of the critic, (*Exam. Dec. 23, 1859*,) had reference to the earliest arm of his defence or attack.—the *Sax*, or curved sword, from the dexterous use whereof that people derived their name—a weapon well calculated for any act of circumambient protection.] Ed.

* [This is the exact position which the author has disallowed in a previous page. Vide, the argument at page 144, and case C founded upon it, p. 146.] Ed.

cute the office he is elected to, and then surely he who thus declines the burden of his own duty ought not to have the right of voting for another to perform it in his room.

Upon these considerations, the cases upon this point are to be determined as follow :—

A—was elected constable, and, by way of excuse for declining the personal service, was admitted to fine.

GOOD.

B—was chosen lamp collector, and though he did not absolutely refuse ever serving the office, yet for the present desired to be excused, and accordingly was upon his promise to serve the same at another time.

GOOD.*

C—was elected scavenger, which duty he refused to comply with, and totally neglected.

BAD.

Here again, the 12th section of the statute

* [A legal excuse from the present performance of a *Lot* duty to which one is eligible to be elected at a *Wardmote*, can only be by the allowance of the assembly as determined by a show of hands.] Ed.

must be taken into consideration, which provides, "That no persons shall bear any lot from which they are exempted by act of Parliament, charter, or writ of privilege:" This perhaps with respect to bearing of lot was intended as a saving clause to surgeons,* apothecaries, attornies, &c. who claim the privilege of being excused from any attendance upon the Ward offices, by reason of their other necessary avocations.

Here we may also take notice of the act of Common-Council, August 31, the 19th of James I. Jones, Mayor, by which it is provided, "That, if such persons as have been chosen Common-Councilmen of the City, shall alter their habitations from the Ward where they were so chosen, to another Ward, that then they shall not be chosen in that second Ward to the inferior place of scavenger, or constable, nor be returned by the Wardmote Inquest to be of the grand and petty juries, if there be other able and sufficient men to supply those places and services."

* Vide statute the 6th of William III. chap. 4, sect. 3. [The Surgeons of London were exempted from bearing arms or serving Ward or Parish Offices by their Act of incorporation, 32 Hen VIII; by which Act they were *forbidden to shave*; and the Barbers enjoined "not to intermeddle in surgery beyond drawing of teeth."] Ed.

So likewise the act of Parliament of the 10th and 11th of William III. chap. 23.* discharges all persons from parish and Ward offices who have a certificate of their having apprehended and convicted any one guilty of the felonies therein described; which certificate may be also once assigned over by them to any other person; but it must be observed, that this must be a certificate of convicting only such felons, "as by night, or by day, privately steal goods of the value of five shillings, out of any shop, warehouse, coach-house, or stable;" for the statute mentions no other species of felony: and it further provides, "That such certificate shall be a privilege only in that Ward wherein the felony was committed, and that if the same be once made use of, it shall not then afterwards exempt any other."

Whenever therefore, such privilege of exemption is pleaded, it must be admitted so far

* [This Act, and several others of a similar import passed in the same reign, afford evidence of the deplorable inefficiency or rather the absence of any regulated system of police. It was the 4 & 5 W. & M. c. 8, that awarded the forty pounds per head on the conviction of felons, which in our own day with woeful truth received the emphatical designation of *Blood Money*. The 10th & 11th of Will. III, cap. 23, was partially repealed by the 1st Geo. IV, cap. 117, but not as to the above exemption.] Ed.

as it shall prove to be within the plain intent of the writ, charter, or act of Parliament, on which it is grounded, according to the following circumstances :—

A—refused to serve as constable, and being now objected to on that account, pleads the privilege, as he is a surgeon, according to the statute of the 5th of Hen. VIII. chap. 6.

GOOD.

B—refused to serve as constable, being free of the company of Apothecaries, according to the statute of the 6th of William III. chap. 4. sect. 3.

GOOD.

C—refused to serve as scavenger, alleging that he has served the office of a Common-Councilman of the Ward of F. of which he was formerly an inhabitant.

GOOD.

D—having refused, &c. now urges, that he was servant to a company, and had orders from his superiors not to attend any other duty or Ward office.

BAD.

E—pleads, by way of excuse, for having refused to be lamp collector, that he then produced a certificate, for the first time, of the conviction of a felon, according to the statute of 10th and 11th of Will. III.

GOOD.

F—pleads the like excuse, but the certificate is not for convicting a felon within that Ward—or it is for convicting one of a different species of felony than what is described by the statute; or it is one that had been before produced and excused another person.

BAD.

It must be observed, lastly, that there is this difference between scot and lot, that *payment of Scot is a duty laid on the house*,* ac-

* [Hence the foundation of the ancient constitution of the local elective franchise lay in the occupancy of rateable premises which gave the title of householder to the inhabitant, (see note, pp. 56-108) at a time when the term inhabitant was synonymous with householder. By the alteration of habits and manners, however, a distinction had long existed, before the disputes, occasioned by the use of the very inconclusive term "inhabitant," were disposed of by Act 11 Geo. I; which however still confirmed to the householder his ancient liability to the *Lot* of the inhabitant. Mr. Chamberlayne, relating the great fire of London, 1666, observes among the "concurrent occasions"

ording to its value ; but *bearing of lot is a service personally due from the inhabitant* ; in the first instance there is, besides the disability of voting, a distress on the goods, especially for non-payment of the lamp, watch, and poor's rate ; but he who refuses, when elected, to take his share of the common burdensome offices, ought more particularly to be excluded, on account of its being unreasonable, as I remarked before, that he should vote others into an office which himself may have refused : for upon the whole, they only ought to be entitled to this great privilege of their society who have cheerfully contributed their proportion towards the good order and support of it, both in money and personal service.

I have all this while only considered the qualifications which a sole occupier of a house ought to have, in order to maintain his right of voting at these elections ; but the 10th sect. of the statute, relating to partnerships, has further enacted, "That in case any two or more partners carry on a joint trade in any such house together, and shall have been

of its rapid progress and devastation, the circumstance that it commenced in the dead time of the week, being Saturday night *when traders had left town for their country houses* —*Ang. Notitia*, 1687.] Ed.

householders of such house by such space of time as aforesaid, such partners shall, upon paying their scot in manner aforesaid, and bearing their respective proper lots if required, have votes &c.*

The construction upon this I apprehend to be, that it must appear that all the partners in a joint trade have been householders of the house in which their trade is carried on, each of them for twelve calendar months next before; I have already defined *a householder, for this purpose, to be one who is rated and charged as an inhabitant of the Ward, by reason of his possession and occupation of a house therein*;† and upon this foundation some have insisted that each partner, in order to come under that denomination, ought to show, that he has been so long expressly set down, and within that space of time charged by his particular name, or, at least, under the description of A. and company; for, though the word company means an unknown indeterminate number, yet from thence it is allowed there is a sufficient intimation given to the other inhabitants to find out of what individuals it consists, in order to rate them in proportion to their number, and to nominate each

* See Appendix, No. VIII.

† See pp. 86, 92, 95, and the appendant notes.

of them to bear his respective proper lots ; but, if A. only is rated in his single capacity, and B. and C. his partners have industriously avoided having their names inserted under any description in the collector's books, it may be presumed the same was done on purpose to be screened from being asked to bear any office ; and, upon that supposition, it has been argued that they ought to be excluded from the privilege of voting, whatever private agreement they may have made to satisfy him that is rated, for taking the whole upon himself ; but, however, it has been held that partners, although not expressly named, nor even under the designation of company, may yet all be entitled to their respective votes, *if they can prove that they all contributed jointly to the rates and rent of the house, and have served, or were willing to serve, their several lots ;** for, if this be proved by sufficient evidence, it would be hard that any one of them should be deprived of his right from the neglect of a proper description in the collector's

* [This position is exceedingly equivocal ; indeed it does appear reasonable that some public intimation of a copartnership should have been given, on which to establish a rating to Scot and a *liability* to the personal duties ; otherwise the liability and the evasion of it rests solely in the breast of the party until he thinks proper to announce his qualification as a voter.] Ed.

books ; this I say must be proved, and the necessity of such a proof will appear in the next place, inasmuch as partners are to pay their scot, which must signify their joint contribution to an assessment that has been made, or was intended to be made, upon all and each of them.

The particular objections, therefore, with regard to partners not being householders for twelve months, must be determined upon the evidence that shall then be given of the following particular circumstances :—

A—, is partner with B, and although his name is not inserted in the collector's books, either at length, or under the description of company ; yet he proves that he hath jointly paid the rent of the house for twelve months past, contributed towards the rates, and has borne, or was and is willing to bear all offices, when required.

GOOD.*

* This case appears to vary from the position it is proposed to illustrate, inasmuch as it rests solely on the neglect of the Ward officer whose duty it is to make out the rate book ; but if A. B. C. are secretly copartners trading under the name of A only, how can any omission of rating be the fault of the collector or assessor ? As to the contribution to Scot, probably the omission will make no

B—is partner with C, as to the goods, in the shop, but, being willing to live retired, agrees, that C only shall be the inhabitant of the house, and pay the rent thereof, and be solely rated thereto.

BAD.

C —, is partner with D, and although he now appears to be jointly rated, &c. yet it is proved that he went into partnership, both as to the trade and rent of the house, only six months ago, and so hath not been a householder for the whole year.

BAD.

At the end of this clause, there is still a farther condition annexed, "That such house wherein such partners carry on their trade be of the true and real value of as many res-

substantial difference beyond the question of each partner's share in the house, and the period that he had so been a joint householder; but in the equally important liability to the performance of his *Lot*, it appears imperative that he should be registered at his entrance as a "frankpledger" of the Ward, in order to the proper rota of his liability. Indeed in a previous page the author insists that every one ought to take care that he is duly rated, and registered at his entrance into the Ward. For the purposes of police this had formerly been the duty of the precinct Constable.] Ed.

pective sums of ten pounds a year, computed together, as there are partners ;” from whence an inference may be drawn, that since the house in which the partners carry on their trade ought to be *of as many respective ten pounds a year as there are partners, so likewise, if their rates be not fully satisfied, there ought to be as many thirty shillings a year at least paid as there are partners ;* and this inference seems to be reasonably founded upon the supposition, that such house in every other respect, except in name, should be considered as *several houses*, and, if as such, the privilege of voting is given to so many different persons, ought not they equally to bear *such share of the public burdens and taxes as so many several houses would have been liable unto?* for it is said expressly in this clause, “That they are to pay their scot in manner aforesaid,” that is, in the same proportion as sole occupiers are to pay.* Now it has already been observed, that no one freeman is entitled to his single vote, whose house is not of ten pounds a year value, and who has not paid to some of the rates, to the amount at least of

* [The clearest exposition of the statute appears to be that joint occupants in trade are made severally householders for the purposes of the Act. See p. 86, *note*, and *note*.] Ed.

thirty shillings ; so then in the same light we should consider partners, as subjected, in manner aforesaid, equally to those conditions, both that their house should be of as many ten pounds a year value, and that they should pay to some of the taxes, at least as many thirty shillings as there are partners ; for in parity of reason, the payment of one sum of thirty shillings ought no more to entitle them to the privilege of a vote, than if their house was only of the value of one ten pounds a year.

However, I do not from hence pretend to imply, that every partner ought so to pay the full of ten pounds a year to such rent, or thirty shillings to such tax, as his own individual share towards the general amount ; but only that so much as makes the whole ought to be paid out of their joint stock ; for the proviso in the clause is no more than that the house shall be of the yearly value of as many ten pounds computed together as there are partners ; therefore, if that sum total be paid, no one has a right to demand what share each contributed towards it, since probably their contributions might be in proportion to the interest each has in the trade, a circumstance which they may choose to keep secret ; and the statute seems intended to preclude any persons from making such impertinent in-

quiries, by thus charging the tax generally and indiscriminately amongst them ; whereas, on the other hand, it enacts, "That they shall respectively bear their proper lots," as a distinguishable duty relative to each person ; for *the necessity which I before urged, of all being rated by name, was*, not that such a proportion of tax might be demanded of each particular, but *in order that they might be particularly called upon to bear their office ;** so that a payment by one may be a payment for all, if all be rated and the whole be paid ; but the service of one will not be a service for another, since each must bear their respective and equal proportions, in all the distinct offices to which they may be severally required.

The qualifications therefore of partners, with respect of their payment of the rates, must be thus disallowed, or admitted, according to the total amount of such payment, whatever the proportion may be which they severally contribute.

A and B. are partners, and have been rated,
&c. but not paid to all, nor twice thirty
shillings to some.

BAD

* [See pp. 166-7, where the author appears to depart from his own principle ; and notes thereon.] Ed.

C—is partner with D, and although they have been rated and paid twice thirty shillings, &c. yet it is suggested that C contributed no more than twenty shillings thereof, as his respective share.

GOOD.

Besides the sole occupier of a house, or partners being householders thereof, there is another distinction made by the 11th section of the statute ; whereby it is further provided, “That where two persons, and no more, not being partners, shall have by the space afore-said, severally inhabited in the same house, such two persons, severally paying their scots, and bearing their respective lots, shall have votes, &c. so as such house, wherein such two persons inhabit, be of the yearly value of twenty pounds, and that each of them pay the yearly rent of ten pounds for his respective part thereof.”*

What must first demand our attention in reading this clause, is, that it confines the privilege of voting to two persons only, severally inhabiting in the same house ; for the frequent repetition of that limited number seems to be purposely made to avoid any construction by which the privilege might be extended to more

* See Appendix, No. VIII.

than two persons, not being partners, inhabiting in one house ; and this is farther guarded against by declaring, that the house in which such two persons inhabit should be of twenty pounds a year value, each paying, that is being responsible for the payment of ten pounds, as his respective share thereof;* but nothing can from hence be inferred, that a house of

* [The necessity of this clause had been occasioned by the confusion into which the elective franchise became involved by the inconsiderate adoption of the term *inhabitant* to represent a householder, which in the course of time almost entirely changed the quality of the constituency—or the majority of it. Thus, the *freemen inhabitants* were a different class and far outnumbered the freemen householders. Every *inhabitant* shared his *Lot*, for Watch and Ward was then a lot duty ; and as to the Scotting, if occasionally enquired into by a scrutiny, the name on the poor roll was frequently held to be sufficient.

It is no less obvious that legislation was required than that it created considerable discontent, indeed almost amounting to outrage, by the vast number of votes it disallowed ; and this was hardly to be allayed by the novel distinction introduced by the Act of Geo. I, between the *several inhabitants* and the *joint occupants* ; yet herein consisted the politics of the measure—the former qualification having admitted, and in the majority consisting of *Artizan-lodgers*, while the latter were the extensive mercantile and trading firms. But for this distinction,—which could hardly be expected to escape dissatisfaction, however just in principle,—the Scot and Lot man, actually inhabitant or not, who by the nature of things could only be the occupant householder, was the genuine voter by ancient custom.] Ed.

thirty pounds a year should give votes to three persons, and so on ; and therefore, whenever it shall thus happen, that three persons or more, pretend each to have a vote, by reason of their being separately rated, all of them ought to be equally rejected ; for, as it is impossible to know whom to exclude, so consequently none of them should be allowed ; and it is probable that the intention and view of thus limiting their number was *to prevent the multiplying of votes*, by a single house allowing a right to so many different persons ; for if this privilege could be obtained by all *lodgers, or inmates* the houses in a Ward might be very unequally occupied, and some be left to stand empty, whilst others would be too much crowded ;* which of course would occasion a deficiency, at least in the aids demanded by parliament. But as this privilege is *annexed only to a sole occupier* of a house ; or to *partners, being householders* thereof ; or

* [The author, although in the first instance he states the undoubted truth, seems afterwards to infer that the disallowance of the votes of the *several inhabitants*, was from a pure regard for the public health ! The maxim is old, though not very obvious, that a *lame* apology is better than none at all ; and the *thousands of freemen* who petitioned against the measure would hardly have been persuaded of an argument which at the present day halts upon the sense.] Ed.

to *two, and no more, severally inhabiting* therein; it induces people, in order to obtain the common privilege of the society, to separate and divide into different habitations of their own, by which means, all the houses are more likely to be taken up, and all the rates and taxes whatsoever more sufficiently answered.

The next observation we are to make on this proviso is, that it entitles such two to vote who have severally inhabited the same house, so as such house wherein they inhabit be of the yearly value of twenty pounds; supposing, therefore there could be any doubt who are to be deemed householders, within the meaning of the former clauses, yet here, the term *inhabiting* being mentioned, and that too repeated, there needs no reasoning by way of implication, to prove them any more than *persons rated as inhabitants*; so that if one rents the warehouse and the other the upper apartments, or if they divide the house and shop between them, to ask which of them keeps house, or whether both diet or lodge therein, are questions which the wording of this clause will not admit of being debated; and this strengthens and confirms what I before submitted,* that *being rated to a house and*

* See page 92

*occupying the same were sufficient to bring a person under the denomination of a householder ; which now plainly appears to be the intent of this statute ; for, since by sect. 7, none but householders are to have a right to vote, and since by this clause persons under the name of inhabitants are entitled, it must follow that such inhabitants are to be construed as householders, and consequently may claim the privilege of voting, if severally rated to the house they so inhabit, as being in this sense each of them householders of the respective part thereof.**

To this end it is further provided, that such inhabitants shall severally pay their scot, in the plural number, different from the case of partnerships, where there is to be but one demand made upon all, to which they must jointly contribute their scot ; but here two distinct assessments are made ; and both inhabitants must pay to all, or at least thirty shillings a-piece to all that they are separately rated unto ; and also must bear their respective lots, in manner aforesaid, that is in the same proportion as if they were each of them separately householders of distinct houses.

Upon the foregoing construction of the

* See note on Appendix, No. XII. [Also pp. 55 & n. 88 & n. 92 & n. 95 & n.] Ed.

words of this clause, we may determine how far two several inhabitants of a house, and no more, are qualified to vote as householders, and paying their respective scots, according to the particular instances here mentioned :—

A, B, and C—, are all three several inhabitants of a house, every one paying ten pounds a year rent ; and are separately rated, and pay thirty shillings a-piece as their respective scots ; so that, as each have an equal right, and all cannot be allowed, it would be injustice to exclude one and admit the other two ; therefore all three must be deemed

BAD.

D and E—, are two several inhabitants of a house, D living in the upper apartments, and E hiring only the shop to carry on his trade, and lodges and diets at another place ; but they both separately pay ten pounds a year for rent, and are separately rated, and answer their respective scots and lots.

GOOD.

F—, is an inhabitant with G, and the house is charged with twenty pounds a year rent, and twice thirty shillings in taxes ;

but F pays only one third thereof, as his proportion.

BAD.

G—the other inhabitant, pays two thirds of the above rent of twenty pounds, and the same proportion to the taxes.

GOOD.

I have before observed, that we ought to consider both *payment of the rates and serving of offices as the principal duties which entitle every inhabitant to the privilege of voting*; and for this reason, the latter part of the 14th and last section relating to elections in general within the city, has declared “That the vote of every person shall be void, who has at any time within two years next before the election, requested to be, and accordingly has been discharged from paying all or any of the rates and taxes which the citizens of London inhabiting therein are liable unto.”*

In mentioning how far and against whom this objection might be urged at the elections by the Common-Halls, I was obliged to distinguish that according to the words of the clause, it could not be extended to those who live out of the jurisdiction of the city, but is

* See Appendix, No. X.

confined to the citizens of London inhabiting therein;* consequently then it must generally affect all who vote at these elections for the choice of officers within the respective Wards of the city, since none can vote at such elections but those who are inhabitants therein;†

* [Vide p. 50 & n.] Ed.

† [The author here appears to have wandered from his argument, unless he mean that none can vote at such election but those who contribute their Scots as inhabitants—a relief from which are the terms of the disqualification. It will be needless for the purpose of controverting evidently a loose expression, to retrace the arguments in the preceding pages (92, 94, 165,) and revert to the enacting clauses of the statute where the right of voting is in *householders*,—inhabitants being entitled only as they can qualify under the former title. At pages 175-6 the author himself says of several *inhabitants*, that there “needs no reasoning by way of implication to prove them any more than *persons rated as inhabitants*,” and that “*such inhabitants are to be construed as householders*” to entitle them to vote. Moreover that “being rated to a house and *occupying* the same were sufficient to bring a person under the denomination of a householder, which now appears plainly to be the intent of the statute.” Disconnecting the disqualification from the qualification, and from all that has preceded, the author would seem to have raised an insulated argument, not very clear nor cogent; that as the disqualification by relief from the Scotting could not apply to Liverymen non-resident and non-rated; that therefore *all rated householders must be inhabitants*. His own arguments refute that position; and therefore it will be more agreeable to suppose the term employed in the text to have been an oversight, than that the author should wilfully have fallen into a blunder so self-evident.] Ed.

and here the objection seems to be founded on very good reasons ; for he who has been discharged, at his own request, from the common rates imposed upon his neighbours, ought surely to forfeit the common privilege that is annexed to the payment of them.*

But this disqualification must be first understood to arise from the being discharged from the total payment of all, or the total payment of any one tax ; the objection, therefore, doth not reach those who may by chance insist upon being remitted a part of a rate, as being overcharged beyond their proportion, and on which account they may reserve to themselves the right of appealing.

In the next place, even as to those who have been returned as excused and discharged from the full payment of any rate, it ought to be proved, that they personally requested the being discharged therefrom, and were accordingly excused in pursuance of their own petition ; because, as I before observed, an omission to set one down to any particular rate, without any application of his own, ought not to be so adjudged as to deprive him of his right, when he has done his duty in every other respect, where he was properly apprized ; and therefore, in this case, it would be an unjustifiable treatment to forbear rating a person to

* [See an inversion of the same argument, p. 95 n.] Ed.

some particular tax, without his knowledge or desire, and then to return his name as deficient from a mere surmise of his inability to pay.

Lastly, when the objection is rightly made out against such a one from being discharged from the total payment of a rate upon his own request, it must appear, that he was so discharged, at some time within two years next before the election. And the words of this clause seem expressly to declare, that the vote of every person is void for having been at any time within two years before discharged, although he may afterwards have been rated, and paid to all the subsequent assessments; and the reason of this I apprehend is because such after submission cannot heal the former deficiency, which, when the half-yearly or quarterly accounts were made up, being then returned by the collectors as deficient, must remain by the evidence of that return, as a mark of his refusal to satisfy his duty at that time: for which, as he cannot make any after recompense, his vote, by way of punishment, ought now to be disallowed.

The objections upon this head therefore must be distinguished as they shall appear under the following circumstances:—

A—, has within two years requested to be discharged from one or two particular rates, and was accordingly excused ; but he was rated and paid to the rest.

BAD.

B—, thinking himself overcharged in several particulars, tendered part of the payment to each, and reserved what he thought was beyond his proportion, to be determined upon an appeal.

GOOD.

C—, the year before last requested to be, and was accordingly discharged from some of the rates ; but this year, in which the election happens, he has been again rated, and paid his latter assessment.

BAD.

D—, was omitted to be charged to a particular rate, but it was without his own knowledge or request.

GOOD.

We are now lastly to consider of the determinations to be made upon that cruel circumstance of one's being objected to, " For having had and received, within the space of two

years next before the election, any alms whatsoever ;”* and here charity itself must teach us to judge with all the lenity and indulgence due to the character of a fellow-citizen and neighbour, who although he be the householder of a house of ten pounds a year, and has discharged all his rates, and borne his lot, and performed his duty in every respect, yet, as an exception to the general rule I have so often laid down, is now to be demeaned by this one only objection of having received alms ; an imputation so low, as to put him upon the level with the common poor of the parish, whom he by his own contributions has before helped to support.

As this is an objection to be offered at all elections within the City of London, I shall once for all mention the several distinctions necessary to be taken notice of ; having before referred to the observations I am now to make, as equally necessary to be considered upon a scrutiny at a Common-Hall, as upon these and all other scrutinies at Wardmote elections.

Persons liable to be objected against by this disabling clause, however sufficiently qualified they may be in every other respect, are such

* See Appendix, No. X.

who have asked and received any sums of money, as charities from private persons, or any public collection; or from any charitable legacies or bequests, or the share of any forfeiture by a penal act of Parliament to the use of the poor; or part of the King's annual bounty money, or the Ward charity coals distributed within the City. Such who have been in any hospital, or infirmary, for the relief of the sick and lame; or received physic or advice from thence gratis, as out-patients; or have been in the London or any parish workhouse. Such also as have been confined in any prison, and received part of the allowance of the bread and beer, or of the box money; or bequests to prisoners; or have been released by the charity of some other person. All these, I say, are liable to be disqualified at any election within the City of London, upon proof that they actually asked for, or submitted to take, and were relieved by one or other of the above mentioned species of charity; some of which are indeed of a very low nature, and therefore it seems to be the intent of this part of the statute, that persons so reduced from their former rank should also forfeit their former right of jointly enjoying those privileges which belong to citizens of a higher station and more sufficient abilities.

So general a disqualifying clause may perhaps in many instances occasion a great drawback upon charity, as it must restrain the inclination of the giver, as well as cause a reluctance in those who want relief, since by their acceptance of never so small a trifle, they at once sell all the privileges which were purchased by their former services ; and thus the very end of the charity is perverted, and the benefit intended proves in the consequence an act of unkindness : it may besides occasion a great misapplication of the public charities ; for it is possible, that *a distribution may at sometimes be made, with a view rather to disqualify a person from his vote*, than to relieve his want ; not that I presume to say this ever has or will be done ; but I only suppose a possibility from hence, that *some designing people may be indirectly tempted to relieve their enemies through spite,** and pay such a regard to their friends, as to overlook their necessities.

From these considerations we ought carefully to make a variety of distinctions necessary

* [The fear of so insidious a disqualification in the City of London at the present day is hardly to be imagined ; but in some of the provinces, a "charitable distribution of coals and blankets" has had an astonishing influence in the result of a general election.] Ed.

to be observed upon all these various kinds of charity, both with regard to the persons who give, or who receive them; and also to the motives on which they are bestowed, or the terms upon which they are accepted.

And, first this objection ought only to be urged against a person for having himself personally received any such alms as aforesaid, *and not because his wife might have received some donation,** or that his servant was admitted as a patient in an infirmary, or his children educated at Christ's Hospital, or any other charity school; *for at this rate the objection may be extended against any of the most eminent citizens,†* who nevertheless may have a son admitted upon the foundation of a public school, or who receives the profit of a fellowship, or of an exhibition in either of the universities; so that, to prevent all such surmises from being carried to too great a length, it will be best to disallow every objection of this sort that may be made on account of such collateral benefit received by the rest of the family, since the very words of the act, which here ought to be taken strictly, go no further than disqualifying those who have actually

* [The author teacheth the young idea how to shoot.] Ed.

† [Large Charity is not vulnerable, it is only small relief that sins.] Ed.

themselves within the space aforesaid, had and received alms.

When this objection is thus personally urged against a voter, the next inquiry must be upon what motives the benefaction was bestowed, and upon what terms it was accepted; for a present from a relation or friend out of love and affection, or a donation to an industrious person by way of reward, plainly arise from motives different from that of mere charity; and, on the other hand, a free gift or act of benevolence may be accepted by one, who would be above taking it under that name of *charity*, or by way of *alms*, *which is a term of a yet lower signification*.* The point therefore to be proved is, that the person, charged with having taken the alms, knew that they were given to him *as such*,† according to the general definition of charity, which is described as a gift bestowed upon the mere impulse of pity and commiseration, and consequently,

* [The author hath grown critical and precise, and speaketh by the card. The terms however are not synonymous, though the distinction is antichristian,—for while alms (ελεεω) bespeaketh *pity*, Charity (χαρις) involveth *love*.] Ed.

† [*Quære*, might not the Act be evaded if the donation were to be presented and taken *under protest that it is not charity*?—something after the nature of a horsewhipping that is not personal!] Ed.

that the object, to whom it is offered, takes it merely as a relief to his want and necessity ; but when other considerations are alleged, as that of gratuity, or reward, or perquisite for some previous service, they ought to be duly weighed by way of abatement to the general imputation, in order to save the right of any one who shall appear to be in a station above the acceptance of any gift through mere charity, though the bounty itself may have originally arisen from a charitable foundation.

Thus, suppose the annual income of an estate is left to some particular company or mystery within the City, part thereof to be expended at different seasons in entertaining the principal members when they meet to settle their accounts and commemorate their benefactors ; and part to be distributed in money amongst the poorer decayed brethren of the same community ; in such case, the partaking of the entertainment ought not to be construed as the taking of charity, but the acceptance of the distribution money most certainly is so.

In like manner, it must always be distinguished according to the intention of the donor, where the thing bestowed may be deemed as a perquisite ; for example, it is customary in many parts of the City to allow a peculiar

share of the King's annual bounty-money, and a quantity of their Ward coals free of duty to their beadles ; and, in some parishes, even to distribute a portion of their sacrament money to their clerks, not as alms, but as part, and in augmentation of their ordinary stipend, and for their personal attendance ; and, although this may be deemed a misapplication of charity, yet it has been allowed, that if those persons take the same by custom in consideration of their office and duty, and the contributors know they do so, and consent thereto, it ought not to be adjudged, either as the giving or taking of charity : but on the other hand, if such parish or precinct officers receive any allowance arising from the bequest of a private person, although they may allege that the same is also a customary distribution to them in respect of their office, yet that must be considered as the receiving of alms ; for, in the former instance, their claim and title of taking it as a perquisite is supposed to be admitted and consented to by the donors ; but here the intent of the testator cannot be known, but by the words of the will, and *if he has therein expressly bequeathed it as a charity, it cannot be given away under any other denomination.**

* [*E converso*, the argument at page 187 note † is good.] Ed.

The same determination must be made on every benefit alleged to be obtained under any will, which called and bestowed it as a charity; and therefore, if under that name a sum of money be left to trustees to set up apprentices just out of their time, or to lend it for a number of years to poor tradesmen without interest (for there are such kind of charities now subsisting in London), they who have received any share thereof must be adjudged to have taken it on the terms upon which it was bestowed.

So also he, that accepts of any forfeiture destined by a penal act of Parliament to the use of the Poor, acknowledges himself to be a person designed by the law to be so relieved, even although the forfeiture was made by himself, and he only receives back the very money he paid; for, having at first so forfeited his property therein, he now becomes entitled to it again no otherwise than as an object of charity within the parish; and thus in all cases in general, of public or private donations, or charitable legacies, and bequests, which are bestowed as eleemosynary gifts upon no other consideration than that of pity and by way of relief; and which are named to be charities, and applied for as such, he who takes them, receives them upon the terms they were given,

and must come under the disability of one receiving of alms.

Since I have made a great many distinctions necessary to be considered on this point, I am obliged to add a great number of determinations that have been, or ought to be made on each particular case ; wherein let it be observed all along, that whatever is alleged, upon each objection, must have happened within two years next before the election.

A—, applied for and received part of a sum of money publicly collected for the use of the poor.

BAD.

B—, petitioned for and received part of a charity left by a will.

BAD.

C—, was admitted a patient in St. Bartholomew's hospital, or received physic from thence gratis, as an out-patient.

BAD.

D—, being absent from home, *his wife unknown to him, received part of a charitable distribution.**

GOOD.

* [Inquest money to wit,—a case which has frequently occurred with either result ; the decision resting with the credibility to be given to the statement of the nonconcurrency of the husband.] Ed.

E—, by his application and interest, got an apprentice or a servant into St. Thomas's hospital.

GOOD.

F—, has a son maintained and educated at a charity school, or at Christ's hospital.

GOOD.

G—, has been in the London workhouse, or in prison, and there received the daily or weekly allowance.

BAD.

H—, often receives presents from a friend and relation, both in money and other necessaries, which are sent only as tokens of affection and friendship.

GOOD.

I—, being a member of a company, accepts part of a legacy or benefaction annually distributed by way of charity amongst the poorer brethren of that community.

BAD.

K—, being a parish clerk, receives, according to custom, part of the sacrament

money every month, by the knowledge and consent of the parishoners.

GOOD.

L—, being a beadle, received part of the Ward coals, which it is customary to give him by way of gratuity for assisting at the distribution to others.

GOOD.

M—, being a beadle, and assisting at the distribution of some legacies, left by way of charity to poor housekeepers, asked for and received part of the same himself.

BAD.

N—, had a loan of a sum of money left by will to be lent to poor tradesmen without interest.

BAD.

O—, applied for and received part of a sum of money forfeited to the use of the poor.

BAD.

P—, received a sum so forfeited to the poor, but it was what he himself had forfeited, and paid upon an information against himself.

BAD.

K

It must have been observed all this while that the first part of the statute of the 11th of George I. with regard to Wardmotes, relates only to the elections of Aldermen and Common-Council men, and although it is thereby in general enacted, that the right of electing an Alderman shall appertain only to freemen householders in their several respective Wards, yet here, by way of exception, we must take notice of the particular manner of supplying the vacancy in the Ward of Bridge Without, which is usually filled by the removal of the senior Alderman passed the chair, stiled the father of the City, without any election by the inhabitants, according to an act of Common-Council, of Sept. 20, 1711, Sir Gilbert Heathcote, Mayor, and whereby it is farther provided, "That, in case of his refusal to remove, then the next senior Alderman, and so successively every other Alderman according to seniority who hath borne the office of Mayor, shall and may, if he think fit, remove to, accept and take, the said Ward: in which case the inhabitants of the Ward from whence such Alderman does so remove shall be summoned, within four days, for the election of another to supply that vacancy in their Ward; but, if none of the Aldermen who have borne the office of Mayor, will remove to,

and accept the said Ward, then the Lord Mayor, for the time being, shall within fourteen days after, cause a Common-Council to be summoned, at which the Lord Mayor, Aldermen, and Commons then assembled, shall by plurality of voices, forthwith elect and choose one fit and able person, being a free-man of the City, to be an Alderman of the said Ward." And, subsequent to this, there has been another explanatory act of Common-Council, passed May 12, 1725, Sir George Mertins, Mayor, whereby the particular time is prefixed in which each Alderman so empowered to remove, shall declare respectively his consent or refusal so to do, that thereupon, if none of them will accept of that Ward, the Common-Council may, in due time, exercise their right of electing a new Alderman to serve therein.

Since the statute of the late King for regulating the elections of Aldermen and Common-Councilmen makes no particular mention of the right of voting in the choice of constables,* lamp-collectors† scavengers‡

* [Vide page 149 note.] † [Vide page 187 note.]

‡ [Scavengers (Sax. *scapan* to scrape) were other of the ancient Leet Officers appointed at the wardnote for each precinct. Their duties were equivalent to our modern surveyors of roads, and they were to employ rakers and

beadles and inquest men, we must refer back to the *ancient usage and bye-laws of the*

carts to cleanse the streets and carry away the mud; the expenses being defrayed by a rate collected by the constable from the householders. In the *Liber Albus*, a collection of City records, compiled in the reign of Henry V, the election of the Scavengers is mentioned in the chapter *Modus tenendi Wardmotum*, as a part of the business of the Mote. It was only in this reign that a general superintendence or control over the streets was vested in the Mayor, when the city was first lighted by public lanterns (1415, Sir Henry Barton Mayor); but the Aldermen still retained local jurisdiction, and it was to them that the Scavengers were to apply for power in the execution of their important duty. Important, for this duty could have been no slight affair, when it is considered that it was not until the reign of Henry VIII, that the streets of London were partially paved "for the convenience of trade" (by statute 34 & 35 H. 8, c. 11); when certain of the principal streets named, were directed to be "paved with stone." So that it was probably not a superfluous act of gallantry that induced Captain Raleigh to spread his new plush cloak for the passage of the Maiden Monarch.

By the Act last mentioned, the Lord Mayor and Aldermen were empowered to punish defaulters in paving the streets; which appears to have been accomplished by compelling inhabitants and owners of houses to pave the street before their own premises, under a penalty of twenty shillings for every perch omitted.

By statute 14 Car. II, cap. 2, for the cleanliness and health of the town, the duties of the Scavenger were strictly enjoined; and by their oath (App. XIX,) those officers appear also to have had "the overseeing and re-

City, which have preserved the choice amongst the householders in general, without respect to

pairing of the pavements " as a modification of their previous duty to the gravelled causeway.

After the great fire of 1666, the several statutes for rebuilding the City of London, and particularly the 22 and 23 Car. II, placed the paving and cleansing the streets and sewers in the management of Commissioners appointed by the Mayor and Commonalty, in whom was then vested the sole power and management; thus superseding the local authority of the Alderman in his ward. But 'the Scavenger' was still a *lot* service, for by statute, 2 Will. & Mary, c. 2, housekeepers were to sweep and cleanse the streets every Wednesday and Saturday, under penalties for the omission.

By the 10th Geo. II, the Corporation by their Commissioners, were authorized to levy rates for the better carrying into effect their former powers; and for the improvement of the streets, the Commissioners were empowered to put up posts for the protection of foot passengers; and to remove penthouses and obstructions, particularly the signs and sign posts which had been put up by virtue of a Charter of Charles I, to distinguish the houses of citizens from those of non-freemen. The 11th Geo. III, embodied the former with other assessments, under the general term "consolidated rate"; and these acts were further amended by the 33rd and 57th Geo. III. and the 4th Geo. IV,—see p. 127 *n*. But notwithstanding the rate, the Lot duty of Scavenger is not wholly extinct,—see p. 149, *n*.]

[Bedel (Sax. Byðel) The summoning officer of the ancient hundred or Leet Court, and thence of the Wardmote. His office was formerly of some authority, and the district of his citation received the name of *Bedelary*, as *Bailiwick* denoted the jurisdiction of the Bailiff (*Lit. l*.

their being freemen, but nevertheless these officers are to be chosen at the annual Ward-

3. c. 5.) "WILL. filius Adæ tenet *Beaufortum* Hundredi de Macclesfield, &c." (*His. Rot. Antiq.*) Thus also a proclamation cited by Ingulphus, "*Eadgarus interdixit omnibus Ministris, id est, Vicecomitibus, Bedellis et Ballivis, &c.*" (*Hist. Croiland.*) The modern gold-laced functionary may place himself upon his honored ancestry and associates; for in common with other remaining Saxon officers, the Ward Beadle retains but the shadowy remnant of his ancient identity. By the Ward clerk he has been shorn of his superior functions, and in return has borne hard upon the Constable; first sharing his powers and at length becoming his supervisor. He yet however summons, opens and adjourns the Mote, makes proclamation in Franco-Norman, and bears the ancient insignia of his powers in his mass of arms.

The ancient oath of the Beadle, was as follows :

Ye shal swear, that ye shal wel and honestly keep the Ward that ye be Bydel; and ye shall suffer no Maner Bybandes, nor none of evil Living, nor Huckster of Ale, nor no men holding Brothels, nor none other noyous, either Women slaudred of evil name, and of evil life, dwelling within the Ward, but you shal certify the names of them unto the Alderman; to that extent, that he shal have them out within fifteen days, and if the Alderman do it not, ye shal annone after the fifteen days ended, do the Maior to wit. And if any Man make a fray, or draw any weapon against the king's peace, ye shal do the Sheriffs to wit, that they may make levy by their Serjeants of such misdoers.

Also ye shal retorne good and lawful men in the Hustings afore the Sheriff, and the king's crowner, to the Quest; and not men suspicious and Maintainers of persons of Evil name: and the Retorne that ye make ye

metes held on St. Thomas's day, or at any other Wardmotes that may be occasionally

shall shew them three or four days before the Hustings, that they may see the retorne, whether it be sufficient or no.

Also ye shal see that no Poulter, nor none other Viatualer, make no sale of Poultry, Corn or Meal, or any other Viatual, in no privy place, against the ordinance of the Maior, but ye shall warn the Maior and Sheriffs thereof.

Ye shal be none officier in Court expedient, during time of your office of Bedylship. Also ye shal brew none Ale, ye shal keep none Bakehouse. Also ye shal be no regastor of Viatual, nor none Huxter of Ale, nor no partner with none of them. And all things to your office belonging, ye shal wel and lawfully kepe, So help you God and Holy Deme, and by this Book.

A special Act of Common Council for the Election of Beadle was passed in 1663, the 15th of Charles II, Sir Anthony Bateman, Mayor; and some of the modern duties of that officer have been appointed by Acts of Parliament for the internal government of the City.]

[The Wardmote Inquest is the legitimate representative of the Ancient Leet jury, which in the fullness of its power had cognizance of all matters short of high treason, or which involved the loss of life or member,—the “right of gallows” being only a manorial right by special charter. Existing at a period antecedent to the formation of the city as a corporation, the distinction of *freemen* was unknown, other than all residents of the Leet, *gild*, *aldermanry* or ward, were enrolled in *frankpledge* within the jurisdiction. Hence to this day, the Wardmote Inquest jury are taken from the “inhabitants” rated in the Ward Books, free or not free of the city,—the rating being equivalent to the ancient enrolment in frankpledge, which involves in its consequences the Scotting and Lotting of

summoned to supply such vacancies as may happen within the year, by death or removal.

the modern householder. In *Liber Albus*, (chap. *Modus tenendi Wardmotum*) is described the routine of the appointment of Ward officers at that time, (temp. Henry V.) by ancient custom. Of the Inquest jury it is written "next the Beadle presents to the Alderman a panel of the good men of the ward, returned by the Constables of the Ward, within their precincts, to be of the jury, which panel the Alderman may amend or alter as he sees occasion, otherwise the same shall stand. Then all the Articles of the Wardmote set down in the 30th folio of the 2nd part of the 3rd book of this Volume are repeated to the jury; and thereupon a day is given to the jury to bring in their presentment: on which day the jury present their verdict by indenture, one part whereof remains with the Ward, the other with the Alderman, to be by him presented to the Lord Mayor at the next general Court.

The "Articles of the Wardmote" referred to, are of great length, embracing matters which have long since diverged into other hands and provided for by general laws, as will be seen under the review of the ancient power of the Wardmote Court.—The modern "Charge," of which many articles are obsolete, is as follows:

Ye shall truly enquire, if any Person keep any Bawdy House, Gaming House, or other House of Ill fame, or keep an Ale House or Victualling House, or sell Beer or Ale, without a Licence.

Also, if any Freeman against his oath made, conceal, cover, or colour the Goods of Foreigners, by which the King may in any wise lose, or the Franchises of this City be emblemished.

Also, if any Officer by colour of his Office do Extortion to any man.

As the right of voting at the choice of these officers is not confined to the freemen inhabit-

Also, if any man incroach or take of the Common Ground of this City.

Also, if any common Way, or common Course of Water, be foreclosed or letted, that it may not have its course as it was wont, to the annoyance of the Ward, and by whom it is done.

Ye shall diligently make Search and Enquiry, whether there be any Vintner, Innholder, Ale-housekeeper, or any other Person or Persons whatsoever within this Ward, that do use, or keep in his, her, or their House or Houses, any Measures which be un-sealed, and by law not allowed, to sell Wine, Beer, Ale, or other Liquors thereby, and whether any of them do sell by any Measures not sealed,

Also, if any Person within this Ward do sell any goods. Wares, and Merchandizes by false Scales, Weights, and Measures.

Also, Forasmuch as it is thought *that divers and many Persons dwelling within the Liberties of this City, daily occupy as freemen, whereas indeed they be none, nor never were admitted into the Liberties of this city, Ye shall therefore require every such Person dwelling within this Ward whom ye shall suspect of the same, to shew you the Copy of his Freedom, under the Seal of the Office of the Chamberlain of the said City; and such as ye shall find without their copies, or deny to shew their Copies, Ye shall write and present their Names in your Indentures.*

Also, if any be dwelling within this Ward which do offer or put to Sale any Wares or Merchandizes in the open Streets or Lanes of this City, or go from House to House to sell the same, commonly called *Hawkers*.

Also, if any have fraudulently or unduly obtained the Freedom of this City.

ants, so neither is such qualification necessary towards being elected to, and serving the same, but *every householder, who is rated to his scot, is liable here to bear his lot, when thus required*; excepting that, by an order of the Court of Aldermen dated November 30, 1736, Sir John Thompson, Mayor, there is a caution given to the inhabitants not to choose any victualler or alehouse-keeper into the office of constable.

In order that there may be some rule of

You shall assemble yourselves twice, or oftner (if need require) so long as ye shall continue of this Inquest, and present the Defaults which ye shall find to be committed concerning any of the Articles of your Charge, to the End due Remedy may be speedily applied, and the Offenders punished as Occasion shall require.

And in making your Presentments, your Clerk is carefully to write the Christian-Name, Sir-Name, and Addition or Calling of every Offender, and the Name of the Parish wherein the Offence was committed, and some certain Time how long the Offence hath been continued, in order to the better Prosecution thereof; and also to write in the Margin, on the Side of every Presentment, the Name or Names upon whose Evidence you make such Presentment; and that you set down at the bottom of your Indenture the Names of one or more Persons, either among yourselves or others, whom you shall agree on to prosecute your Presentments.

GOD SAVE THE KING.

All which the said jury are sworn to enquire into and true presentment make,—see Appendix, XX,] Ed.

knowing and ascertaining who have a title to vote at these elections, where the right is left so much at large, it is directed by an act of Common-Council, October 26, 1692, Sir Tho. Stampe, Mayor, "That the beadles of the respective Wards shall prepare and deliver to the Alderman, or person, deputed by him at such Wardmote, a list of all the freemen householders dwelling and residing in the said Ward, apart and by themselves; and also a list of the other householders within the said Ward apart and by themselves, to the intent that such freemen householders may elect the Aldermen and Common-Councilmen, and they together with the other householders may choose their constables, scavengers, inquests, and beadles."*

* [The act of Common-Council, 1692, was a reversion to the distinctive properties of the Wardmote Court, originating with the institution of the representation by deputies in Common-Council, and the election of such deputies in that Court. Previously to that time the character of the Wardmote had been that of a Court Leet, holden before the Alderman as Steward;—the jurisdiction embracing the qualities and powers of a Saxon *Soke*. Indeed the charter of Henry I, provided that the Barons and Citizens should have their *Sokes* in peace; and guests tarrying within any of these *Sokes* should pay custom to those only to whom the *Soke* belonged. It is unnecessary here to pursue this interesting subject further than to shew the nature of the jurisdiction and the quality of

It cannot be supposed, that any will offer themselves candidates for such of these offices

the Court. The former has been stated; and the latter upon its Saxon model, was the compulsory attendance of the inhabitants of the Soke, Gild or Ward, (peers of the realm, ecclesiastics and children under the age of 12 years alone excepted) summoned to attend at a certain place on a day named before the Alderman or his deputy, to be admitted into frankpledge, and to do suit and service within the Ward, for all purposes of local government, either as Constable, Scavenger, Questman or in any other capacity which might be required by the Court; and these liabilities and the performance of them constituted the services understood by the term *Lot*.

In this congregation of the Ward so assembled, the election of the Common-Councilmen was afterwards appointed to take place, not however as a component of the business of that Court, beyond the convenience of the occasion which assembled all the inhabitants as well *freemen electors* as other frankpledgers of the Ward for their general local purposes. In *Liber Albus* (chap. *Mod. tenend. Wardm.*) This distinct character of the Mote is clearly defined; and the Beadle is directed to return to the Alderman at the Court Leet, *two lists* of the inhabitants of the Ward; one of the freemen by themselves, and the other of the unfreemen by themselves; to the end that the alderman might distinguish which of the inhabitants are free and which are unfree; that among the former only he may proceed to the election of Common-Councilmen. This was the practice at and some time previously to the reign of Henry V, when the compilation of the work above cited was made; and so it continued until the intermixture of separate interests in one assembly, and the neglect of the proper officers to keep those interests distinct, at first led to the error, of admit-

as are merely of burden,* and therefore, upon this supposition, a provision is made in the statute of George I. that whoever refuses, that is, without pleading any privilege by way of excuse, as I observed before, to serve his lot to any of those offices after nomination and election, shall be liable to the disability and forfeiture of his vote at all future elections.

However, as the place of a beadle of a

ting all the assembly (*free or not free of the city*) to vote in all the business then transacted at the Mote; and the course of time giving colour to a plausible right, obtained confirmation by an Act of Common-Council "concerning elections" passed during the Commonwealth, (4 Nov. 1651,) which at once breaking down all the existing elective institutions, declared the "Inhabitants" without any other qualification, to be the *only electors* for all purposes as well in Wardmote as in Common Hall. Thus the practice directed by the Act of Common-Council, 1692, which would appear by the text to have been a very recent ordination, was in fact the ancient rule, and that Act merely a restoration of the original right of the citizens from the incroachment of usurpation.—Still however the distinction between freemen and unfreemen in respect of elective rights having been so completely broken down, was never adjusted until by the interference of parliament in the Act of Geo. I.] Ed.

* [The author had not contemplated the advent of an amateur; yet late years have produced several, whereof one, after repeated petitions to be re-elected into the Saxon office of Constable, has long been living evidence of the triumph of moral fitness over difficulties, to the accomplishment of presumed destiny.] Ed.

Ward or particular precinct is of some profit, for which it is usual for great numbers of honest decayed house-keepers to petition upon every vacancy, it will be proper just to propose such rules as may tend to the most quiet, cheap, and expeditious manner of determining any contest that may arise upon a disputed election for that particular office; and to this purpose the inhabitants ought first of all to be apprised of an old act of Common-Council, of October 10, 1663, Robinson, Mayor, which should always be read at the Wardmote upon proceeding to the choice of beadles; whereby, in order to prevent too great confusion by a multitude of candidates, it is ordained and established, "That the Alderman of each Ward, with the consent of his duputy and Common-Councilmen, or the major part of them, shall at the accustomed time of election, nominate unto the inhabitants of the said Ward two honest, sufficient, and discreet persons for the place of beadle, &c. and that the said inhabitants shall choose one of the said two persons so nominated, who being so elected shall fully hold, enjoy and exercise the said office."

If therefore a poll should be demanded upon a disputed election between two so nominated, the time for finishing the same must

be left to the discretion of the presiding officer, whose duty it is to proceed therein from day to day until it be concluded, without any long or unnecessary adjournments, and to close and finish it at such fixed time as shall be agreed upon by the contending parties, with his approbation ; and, since the qualifications necessary to entitle the inhabitants to vote are left unlimited, as to their being free of the City, *every one must be admitted to poll under the general title of a householder within the Ward*, according to the definition of a householder before laid down,* in consequence whereof he must be an inhabitant of a house rateable and charged thereto by name, or at least liable to pay his scot, and bear his lot, though there is no necessity that he should prove the actual performance of either of those duties, as required upon the election of Aldermen and Common-Councilmen ; nor is it requisite here that he must have been such householder for any particular length of time ; for, although he may not have lived so long a while within the Ward, as to be charged to any rates already due, yet it will be sufficient if he appears as one who will be liable for the future. And, as no oath is di-

* See page 92.

rected to be administered to those who shall offer to poll, nothing more can be required of them, than their name and place of abode, and an assurance that they have not polled before. But in order to avoid the taking down the names of such persons as are not properly householders of the place they may pretend to live in, it will be a good check to have the rate books of the several parishes ready at the Wardmote, to which it may be referred, whether the name of any such suspected person be rated therein; for, if it be not, his poll ought to be denied, unless he produce some other voucher, that he lives in a rateable house, though not charged expressly by his own name.*

* [In default of other regulation, the election of Leet officers must remain upon the ancient constitution of the Court of Wardmote, where all admitted into frankpledge were *liberos inhabitantes wardam* and entitled to a voice. The frankpledger obtained an immediate right, the same as a freeman of the City at the present day. The rating was a liability consequence upon frankpledge; but the payment of rates as giving, or the nonpayment as denying, the right of the voice of a freeman, has been a modern invention legalized by statute, to induce the payment of certain contributions. In all Wardmote elections, (other than those for Aldermen and Common-Councillmen which involve the city freedom) the rated householders, as representative of the ancient frankpledgers, if only of three days habitation—are the legitimate electors. A limit of three days

Such previous examination may be necessary, even upon the poll, on purpose, if possible, to prevent any pretence for demanding a scrutiny; but if a scrutiny be demanded, and it is thought reasonable to grant the same, it must be proceeded upon in such time and method as the Alderman or his deputy shall direct, requiring, at the same time, for his own justification, the consent and agreement of the several contending parties; for there is no act of Parliament, nor by-law of the City, directing how to proceed therein; and I fear it would be too expensive for the candidates to such an office to pursue the like measures as are to be taken upon scrutinies for Common-Councilmen.

That the Alderman therefore may direct these proceedings in the cheapest and most expeditious manner, he should first adjourn the Wardmote for a few days, in order to deliver out copies of the poll to both the candidates, and then all parties being met again in pursuance of the adjournment, it may be agreed that the poll-books, together with all the parish rate-books, be laid together for the examination and inspection of a number of scrutineers to be appointed for

was the ancient allowance for the enrollment, exceeding which time, the party was liable to be amerced—in the penal sum of fourpence.] Ed.

each candidate ; and that, in going over the names of those who have polled, every person be allowed in the first instance to be properly qualified, "who is a householder of a house rateable within the Ward, and who in pursuance thereof is actually charged by name to the watch or poor, or all or some other of the rates in the books of the parish, in which he has polled as an inhabitant, or who can prove by other evidence, that he is liable to the payment of such rates, though not charged by name."

Actual payment, as I before observed is not necessary, even to the lamp and watch rates, though charged thereto ; for the disabling clauses of the two acts of Parliament, relating to those rates, if construed strictly, as they ought to be, refer only to those who vote at the elections of Aldermen and Common-Council men ;* but yet the vote of such

* [The terms of the several acts of Parliament which thus operate to incapacitate for voting in any one election, must so operate generally to all. The 9 Geo. II, c. 20, s. 13, and the 10 Geo. II, c. 22, s. 10, for the Lamp and Watch ; and the 11 Geo. III, for consolidating the same, each incapacitate for voting "*at elections within the City of London*" (without particularizing any, and consequently including all elections dependent on a Scot and Lot right) every person who shall neglect or refuse payment, or who shall pray exemption by reason of poverty, &c. See Appendix, No. XI.] Ed.

householders may be rendered void, even at this election, if they have within two years before been discharged, at their own request, from any rates, to which as citizens of London and inhabiting therein they ought to be liable; or, if they have within that time received any alms whatsoever; for the 14th section of the 11th of George I. in general directs, "That such persons shall be disqualified at all elections of any officers to be chosen in and for the said City, or any of the Wards or precincts thereof;" accordingly the determinations to be made on such a scrutiny will be confined only to the three following objections: First, for not being a householder, &c. —or in the next place for having requested to be discharged from the payment of taxes, &c. —or, lastly, for having received alms, &c. I must refer, therefore, to the observations I have before made upon each of these circumstances; for it is needless here to add any more remarks, where there is so little likelihood that such a contest will be made, or if such contest should ensue, where the rules for deciding it lie in so narrow a compass.

There may be many other circumstances, which have heretofore, and may hereafter happen, that are not comprised in the above observations; the determinations of which

are, in general, to be governed by this equitable rule and principle, that he who has paid all that he is liable unto ; borne all offices required of him ; and never knowingly omitted any duty ; nor wilfully committed any default ; is entitled to a vote by way of recompence for the share he has thereby contributed to the support and good order of the community in general.

And now I must beg leave to mention some subsequent proceedings which are necessary, to be attended to, after the elections are over, both at the Common-Halls and Wardmotes.

And, first, it may not be improper here just to take notice, that if an opposition should be so equally carried on, as that the presiding officer should not be able to decide it in the first instance upon the view of hands, both parties ought immediately to proceed to a poll ; or, should the numbers be equal on a poll, there must be a necessity of entering upon a scrutiny, to discover who may have the majority of legal votes ; or, lastly, if a presiding officer should declare the numbers to be even upon a scrutiny, all proceedings must be renewed in order to come at a choice, according to the intent of the original summons : for, as even numbers for two is no election of either, the voters do not answer the direction

of the precept or summons by which they were convened, until they have made an election by a majority for one side or the other.

After a scrutiny has been taken, and a declaration made, the 5th clause of the statute of the 11th of Geo. I. enacts, "That the presiding officer or officers shall deliver a true list of the voters disallowed by him or them upon such scrutiny to any of the candidates who shall then demand it within six days after the demand."

Now, this must mean a list of the voters disallowed on both sides, and so the order is more expressly worded by the act of Common-Council, December the 6th, 1712, Sir Richard Hoare, Mayor, from whence this clause, and indeed the plan of the rest of the statute, relating to the time and method of elections, was taken and formed; for it is equally an offence to allow such votes to be good which were proved to be bad, as it is to deem such to be bad which were proved to be good; but how can a candidate be informed what votes are allowed good on the opposite side, but by having a list of all that were disallowed? This list, however, is not to be admitted as evidence against the presiding officer upon an information for the penalty of this statute, on any election whatever.

If any citizen shall refuse, after election, to execute the office he is chosen into, there are several methods prescribed, both by acts of Parliament and the by-laws and customs of the City, according to the nature and importance of the duty, either to enforce his obedience, or punish his neglect; and penalties are fixed not only for refusing to serve the inferior burdensome offices, but also for declining those which are of a more honourable rank; thus by an act of Common-Council, August 9, 1710, Garrard, Mayor, "If a person free of the City, being elected an Alderman, shall not personally appear at Guild-Hall, and take upon him the said office and charge, he is to forfeit the sum of five hundred pounds;"* and by the act of July

* [The very high honour of the *Freedom of the City*, so frequently conferred upon public Characters, is thus not without its possible drawback. In 1752, upon the death of Mr. Ald. Winterbotham during his Mayoralty, the Ward of Billingsgate, in consideration of his great public services against the enemy, did Sir Peter Warren the honour of electing him to the vacant office (he being a freeman of London, by the presentation of the Goldsmiths' Company.) In vain did the gallant officer decline the civic gown as quite incompatible with his military employment. He begged to be excused, thanked them for the distinguished honor they proposed to confer upon him, and sent them two hundred guineas, one half for a dinner, and the other for the poor of the Ward. But the honor was

20, the 7th of Charles I. Ducey, Mayor, which I have mentioned before on other occasions, it is ordered, "That, if any person being a freeman of the City shall be elected Sheriff, at the Court of Hustings at Guild-Hall, and shall refuse to give bond, as therein required, to hold the said office, he shall forfeit the sum of four hundred pounds; and if the person so chosen be an Alderman, and shall so refuse, then every such Alderman shall forfeit the sum of six hundred marks, &c. And every person or persons, so refusing, shall nevertheless, after such forfeiture, remain eligible yearly to be Sheriff." And it is further enacted by another Court of Common-Council, held October 22, 1703, Sir Samuel Dashwood, Mayor, "That if the Lord Mayor, in the presence of six Aldermen, shall, between the 14th of April and the 14th of June, in

not to be declined; and he ultimately paid five hundred pounds into the Chamber of London, as the consequence of accepting the city freedom! Thus the distinguished honor was converted into a mulct. [Look to it, Albert, thou also art a goldsmith.] Thus it was not without some colour of fear, that the poor Welchman, who had unwittingly opened a milk and potato establishment in the privileged part of Golden lane, pleaded in extenuation of the presentment of his non-freedom by the Wardmote Inquest—"that he would willingly obey the mandate of the Chamberlain, but he was afraid of being chosen for Sheriff!"] Ed.

every year, nominate a fit and able person, being a freeman, for Sheriff of the City, the person so nominated shall not be exempted therefrom, unless, within six days after notice, he pay the sum of four hundred pounds, into the Chamberlain's office, &c. which if he accordingly pays, then he shall be discharged from serving the said office for three years next ensuing; but in case of his refusal to pay that sum, he shall, at the next Common-Hall summoned for the election of Sheriffs, be the first commoner put in nomination; and, if he there be elected, and shall refuse again to take upon him that office, he then shall forfeit and pay the sum of six hundred and twenty pounds."

• [The election of Sheriffs, and the right of nomination in the Lord Mayor, had been a cause of great contention for some years before the Act of Geo I; which confirmed the right of election to the Livery. The "Order for the election of Sheriffs," appears to have been, that "the Lord Mayor and Aldermen with the Sheriffs should meet at Guild-Hall at eight of the clock in the morning, of Midsummer Day, apparelled in their violet colour gowns lined, and their cloaks of scarlet lined, *without their horses.*" (New view of London, 1708, "as I had it" says the author, "partly at Guild-Hall, from the Order printed with the City Arms.")

"And when they have come together in the Council chamber a certain time, concerning the nomination of certain persons to be elected, my Lord and the Aldermen

Such as submit to pay these fines are however afterwards so far indulged, that, notwithstanding they might be again eligible according to tenor of the bye-laws above re-

come out and put on their cloaks in the Orphan Court, and then go down in order to the Hustings Court; when Mr. Recorder standeth up, and making his obeisance, first to my Lord, then to the Commons, declareth unto them, that it is *for the election of one of the Sheriffs of London, and the Sheriff of Middlesex for the year ensuing, and the confirmation of the other Sheriff nominated by my Lord Mayor according to his Prerogative.*"

The City of London being a City and County has two Sheriffs acting in law as but one—and not one for London and the other for Middlesex, as is commonly supposed.—3 *Co. Rep.* 72.

In the absence of any evidence upon the matter, the *Prerogative of nomination* in the Lord Mayor, would seem to have arisen out of a kind of composition with the citizens upon a finely drawn construction of the assumed grant of the Shrievalty of London to the *Mayor and Citizens*, as if the Mayor was to appoint one and the Citizens the other; and the Act of Common-Council of 1703, to have been intended to determine a disputed right to the power of nomination in the Mayor, for which nothing beyond a prescription of sufferance could be shown. The Act indeed does appear exceedingly unjust and arbitrary, by placing so heavy a fine at the imposition of an individual person; although it may have been necessary to support the authority of an imperative appointment, if such had existed of right; but the charter of Henry I, and the charters, and acts of Common-Council, 4 Henry V, 7 Rich. II, &c. say, the Sheriffs are *to be freely and indif-*

cited, yet, upon application made by any one to the Common-Council, a resolution or order is usually passed to exempt and discharge him from ever after serving the said office,

ferently chosen by the citizens; and agreeable to this is the usage at the present day.—Lex. Lond. 116.

The Lord Mayor's prerogative is however the assumption of a distant period; and when questioned in the year 1641, a prescription of 300 years was claimed for the custom. It was evidently not a newly exercised power at the period to which the earliest record of the practice refers. This was 27th Eliz. (1585,) in the Mayoralty of Sir Edw. Osborne, who in the month of July, being present at a great feast at Haberdashers Hall, after the second course, "took up the great standing cup, (the gift of Sir Will. Garrett,) full of Ypocrase, and silence being commanded, he with a loud voice, said, "Mr. Recorder of London, and you my good brethren the Aldermen, bear witness, that I drink unto Mr. Alderman Massam, as Sheriff of London and Middlesex from Michaelmas next coming for one whole year; and I do beseech God to give him as quiet and peaceable a year, with as good and gracious favour of her Majesty, as I myself and my brethren the Sheriffs now being, have hitherto had, and as I trust shall have." This spoken, all men desired the same; and Mr. Sword Bearer departed to the Grocers feast where Mr. Ald. Massam was at dinner, and reported the words that my Lord Mayor had used. The Alderman answered very modestly: First I thank God, who through his great goodness, hath called me from a very poor and mean degree unto this worshipful state. Secondly, I thank her majesty for her gracious goodness in allowing us these great and ample franchises. And thirdly, *I thank my Lord Mayor for having so honor-*

with an exception, that if a commoner, at such time excused from serving the office of sheriff, should afterwards be elected an Alderman, he then shall be again liable to be chosen Sheriff.

Lastly, there are many instances on re-

able an opinion of this my Company of Grocers as to make choice of me, being a poor member of the same. This said, both he and all his Company pledged my lord and gave him thanks. Several writers on city history date the practice from this, as the first occurrence of nomination for Sheriff, by drinking to the person selected; but the whole course of the ceremony as recorded, controverts that supposition, and implies rather that it was then the common and known form of appointment. Stow indeed furnishes a reason for the Mayor's prerogative. He says "first the Maior shall choose, according to his own free will, one discreet man free of the city, to be one of the Sheriffs for the ensuing year, for whom he will answer to the king the moiety of the farm of the city, if he so chosen, be not sufficient. But if the Maior choose by the counsel and assent of the Aldermen, they must answer with him. And for the other Sheriff, chosen by the Common-Council for themselves and the others summoned by the Maior for this cause, on behalf of the Commons, the whole commonalty must answer for the other moiety of the farm due to the king, if he be not sufficient.

In 1682, 34 Car. II, by an Act of Common-Council embodying "a brief collection out of the records of the City touching the election of Sheriff;" it appeared that the nomination by the Mayor had been exercised from the 21 Edw. III.; and the custom of "drinking" was stated to have been at that period, the form of nomination by custom, notwithstanding the general right of the citizens by the terms of their Charters.] Ed.

cord, whereby it appears that sometimes the Court of Aldermen, but more frequently the Court of Common-Council, have used a discretionary power, either of punishing or excusing such as have refused to accept the higher office of Lord Mayor, upon their being elected thereto, and particularly at a Court assembled, for this very purpose, on St. Simon and St. Jude, in the 15th year of Henry VIII.* it was enacted and agreed, "By the Mayor, Aldermen, and Commons, and by the authority of the same, that whensoever hereafter it shall happen any Alderman, to be elected and chosen Mayor of the City, and that he so elected, eloigneth, absenteth, and

* This Court was held to punish George Monoux, Alderman, who having been acquainted that he was elected Mayor, on the translation of St. Edward the King, and being called upon to take upon him the said office, and not appearing, &c. it was upon the same day decreed, determined, and adjudged, that he should forfeit and pay the sum of one thousand pounds sterling, to the use of the City, &c. and thereupon it was further in general enacted, as above recited. Afterwards at a Common-Council, held on the 28th of July, the 16th of Henry VIII, he petitioned, that the decree against him, on St. Simon and St. Jude's day might be revoked and annulled; to which, as it is there expressed, the Mayor and Aldermen agreed, on some special conditions; and the Common-Council also confirmed the same. There are about fifteen more precedents of the like nature recorded in the City Journals. [Anciently the fine for Mayor was looked upon as

withdraweth himself from this City, only to the intent that he will not take upon him the charge of the same mayoralty, that then, and as oftentimes as he doth so, he shall forfeit to the Mayor and Commonalty of this City one thousand pounds sterling, the same to be levied on his goods, chattels, lands, tenements, rents, &c. being in his possession, or else in any other person, or persons, having possession, to his use; or else by action of debt in the name of the Chamberlain; or in

a compensation for calling upon another to serve the office before his time. In 1345, (19 Edw. III,) Richard Lacer, Mayor, it was ordered that "if he who shall be chosen Mayor on St. Edward's day, (13 Oct.) be absent at the election or refuse to serve the said office, he shall forfeit one hundred marcs to be levied of his goods &c. by the Berjeants of the city, and *to be paid to him who shall be chosen in his place* on the feast of Simon and St. Jude. And also that every Alderman who shall absent himself at the election of a Mayor on the said feast of St. Simon and St. Jude, without reasonable cause, to be allowed by the Mayor and Aldermen, shall pay to the Chamberlain of the said city the sum of twenty pounds, (*Lib. F.*) In 1308, (42 Edw. III,) Walter Berneye was elected Mayor; but not appearing at the feast of St. Simon and St. Jude, to take upon him the office, Simon de Mordon was elected in his stead, and the day following admitted accordingly by the Barons of the Exchequer. Whereupon issued an order for levying by distress on the goods of the said Walter, one hundred Marcs *for the use of the said Simon the Mayor*, pursuant to the ordinance above recited.—*Lib. G. fo. 216.*] Ed.

any otherwise, as by the Mayor and Aldermen for the time being, shall be thought most and best convenient." However, not to rely on ancient precedents, there are some of a modern date, which show that a Court of Common-Council, has assumed the power, after an election, either to compel or excuse the service of that office.*

But whatever penalties may have been fixed, or whatever discretionary powers may be exercised, to punish those who refuse when they are properly qualified; yet there are some particular offices which the person, elected or to be elected, may be under such an inability to execute as must necessarily discharge him from the undertaking.

The first disqualification of this sort is the insufficiency of fortune, which may be pleaded, and is such an excuse as ought to be allowed in all instances, where there is a necessity to

* At a Common-Council held on the 10th of October, 1740, Sir John Salter, Mayor, it was moved, "That Mr. Alderman Heathcote (who, having been elected Mayor by a majority of the Court of Aldermen, had desired to be excused), should be compelled, by fine or otherwise, to serve the office of Mayor, for the year ensuing;" which passed in the negative, and the contrary motion, "That he should be excused, was agreed to, and a Common-Hall was afterwards summoned for the nomination of another in his room.

support any kind of dignity in the office ; to this purpose therefore the afore-mentioned act of Common-Council, made in the mayoralty of Sir Samuel Garrard, "exempts and discharges every person, chosen or to be chosen an Alderman, from the said election, if he will voluntarily take his oath before the Lord Mayor and Aldermen, that at that time he was not of the value of fifteen thousand pounds, in lands, goods, and separate debts ;" so likewise the act of Common-Council of February 3, 1737, Sir John Barnard, Mayor, which was made to alter and amend a former act, "exempts and excuses any person chosen Sheriff of the City from serving the said office, if he will take the same oath, in the open Court of the Lord Mayor and Aldermen, that he is not of the value of the like sum of fifteen thousand pounds : " in both which cases it is further enacted, "That such persons do bring with them six other citizens of good credit and reputation, who shall likewise testify upon their oaths, that they in their consciences believe the said person so elected, or to be elected, an Alderman or Sheriff, hath deposed and sworn truly."

The next disability that may be suggested towards the discharging of any one from such place or office, is, that of his not having re-

ceived the sacrament according to the rites of the Church of England within the year before, in default whereof by the statute of the 13th of Car. II. chap. 1. sect. 12, "No person is to be placed or chosen into any office of Mayor, Alderman, Common-Councilman, or other office of magistracy, &c. concerning the government of any City or corporation;" this disqualification may and ought most properly to be urged by way of opposition to the candidates, at or after the election, though it does not disable him from being elected; but the presiding officer ought to certify to the corporation the objection made as to such disability, where the person so chosen may be refused admittance into the office, or, if admitted and sworn in, may be afterwards removed by them, or by the prosecution of any other person; provided, as it is enacted by a subsequent statute of the 5th of George I. chap. 6, sect. 3, "He be so removed by the corporation, or such prosecution be otherwise commenced (that is, by any other person) within six months after he is placed or elected into his office."

Therefore, if the six months are elapsed, and no prosecution has been commenced by the corporation or otherwise, the person elected is so far discharged from being ever after

prosecuted on account of his disability, and may then take the advantage of the occasional indemnifying act of Parliament, which is usually passed every session, whereby it is enacted, "That all persons who have omitted to qualify themselves for offices and employments, within the time limited by law, shall if they afterwards take and subscribe the oaths, and receive the sacrament according to the act of the 13th and 25th of Car. II. be indemnified from all penalties incurred by the above-mentioned acts, and be actually recapaciated, in the same manner as if they had not made such omission."

But there have been some instances, where gentlemen being Protestant dissenters from the established Church, have voluntarily suggested this their own incapacity, as disqualified to serve an office they have been elected into by reason of their not having received the sacrament, according to the rites of the Church of England, &c. Since this is a matter of very great consequence, and has been the subject of a large controversy, I shall not presume to offer any private opinion, but must refer to the legal decision that may hereafter be made upon it in Westminster-Hall, whenever such a plea shall come under litigation against an action brought for the penalty of a refusal in

pursuance of any present or future bye-law that may be made.*

Those who are qualified and willing to serve, being elected, and declared to be elected, must be returned, admitted, and

* [These two "bulwarks of the constitution," called the corporation and test acts, erected, says Blackstone, "in order the better to secure the established church against perils from non-conformists of all denominations, infidels, jews, heretics, papists, and sectaries;" having by recent concessions, been accommodated to the diverse religious opinions of Her Majesty's subjects—the object of the oaths of allegiance, supremacy and abjuration previously required for the safety of the Crown, is still attained, without exclusion, by binding each according to the nature of his faith to the same purpose. Even the Catholic is compelled to abjure any temporal or civil power of the Pope within this realm, and to disclaim any intention to subvert the present church establishment as settled by law. The toleration Act, (1 *Will. & Mary*, *st.* 1, *c.* 18,) had long previously relieved Protestant dissenters in the like matter; until Sir Humphrey Edwin, Lord Mayor of London, had the imprudence to go to a presbyterian meeting house "in his formalities"—a circumstance which gave occasion to Swift's allegory of jack getting on a great horse and eating custard, (*Tale of a Tub*.); and the bad example ultimately produced the Act 5 *Geo. I*, *c.* 4, by which no Mayor or principal Magistrate may appear at any dissenting meeting with the ensigns of his office, on pain of disability to hold that or any other office, "the legislature judging it a matter of propriety, that a mode of worship set up in opposition to the national, when allowed to be exercised in peace, should be exercised also with decency, gratitude and tranquility."—*Black. Com. b. IV*, *p.* 54.] Ed.

sworn in the proper time and place to the due execution of their respective duties ; and, that each of them may in some measure be apprized of the nature of their duty, from the contents of what they are then sworn unto, I have in the Appendix subjoined the oaths which each officer is to take upon such his admission.

But observe here, that, as the Lord Mayor elect, though chosen on Michaelmas day, is not to enter upon his office until the* eighth of November following, yet he must be presented, immediately after his election, unto the Lord Chancellor or some other of his Majesty's justices, authorized to receive such presentment, according to the directions of the fourth charter granted by King John, and of the second charter of Henry III, both of which, in the same form, "grant and confirm unto the barons of the City of London, that they may choose unto themselves every year a Mayor, who may be faithful, discreet, and fit for the government of the City, so as, when he is chosen, he be presented unto the King, or his justices, if he be not present, and who shall swear to be faithful unto the King.

Accordingly on the 8th of November, the

* [See *ante*, note, p. 34.]

newly elected Lord Mayor, upon his being invested with the regalia and authority of his office, takes the ancient oath before the citizens at Guild-Hall, "That he will well and truly serve our sovereign Lord the King, in the office of mayoralty of the City, &c." and on the next day, which is commonly called the Lord Mayor's day, he goes in solemn procession to Westminster-Hall, where, being presented unto his Majesty's justices of his Exchequer, he again takes the same oath well and truly to serve the King, &c. And at the same time the former Lord Mayor is sworn to give in his accounts, and truly to execute the office of Escheator and of Gauger, within the liberties of the City of London.

But when a new Lord Mayor is occasionally chosen upon the death of a former, and it happen not to be within any of the four terms, in which the Barons of the Exchequer sit at Westminster, it is then further granted by the charter of Edward I. that, upon such emergency, "The Mayor of the city, when chosen, and the King and his Barons not at Westminster, nor at London, may and shall be presented and admitted to and by the constable of the Tower of London."*

* Daniel Lambert, Esq. was elected Lord Mayor on Monday the 23rd of March, 1740, upon the death of Hum-

In the next place, such who are chosen Sheriffs at Midsummer, are also to take notice, that, although they are not to enter upon their office, until the eve before Michaelmas day following, yet by the act of Common-Council of July 20, Sir Robert Ducey, Mayor, "Each of them is forthwith to be called upon to give his consent to take upon him the said office, and is thereupon to be summoned personally to appear before the Lord Mayor and Aldermen at their next Court after the election, unless such excuse be made as shall in the open Court be allowed; and is then and there to become bound unto the Chamberlain, in the sum of one thousand pounds, that he shall personally appear at Guild-Hall at the vigil of St. Michael, there to take upon him the charge of the Shrievalty of London and County of Middlesex;" and accordingly upon such person's default in not appearing before the Court of Aldermen, or refusing so to be-

phrey Parsons, Esq. and on Wednesday the 25th of the same instant following, it being then the Hilary vacation, he was sworn before the Right Honourable Lord Cornwallis, Constable of the Tower, in a large booth erected for that purpose, just at the entrance of the Tower Gate; to which place the Lord Mayor was attended in solemn procession from Guild-Hall by the chief Magistrates and officers of the City, in the usual state, with the addition of being preceded by the company of Tower-Hamlets.

come bound, and declaring such his refusal, he, at that instant, incurs the fine and forfeiture as has been before mentioned; and the liverymen are to proceed to a new choice, and must be summoned from time to time, upon the refusal or insufficiency of each person elected, until such are fixed upon as are qualified and willing to execute the trust; in recompense for which, it is with great equity provided and declared by the same act of Common-Council. "That, in the distribution of the fines and forfeitures of those who shall in that year refuse to give bond, one hundred pounds, part of the forfeiture of the first person that has made such default, shall be given to the first Sheriff; and one hundred pounds more, in case there be a forfeiture from a second person, shall also be given to the junior Sheriff, upon their acceptance and entrance into the said office."

The Sheriffs elect, having given bond to serve, must be careful, according to the condition of such bond, to attend in person at the eve of Michaelmas day, even though that should happen to be Sunday, at the Court of Hustings at Guild-Hall, and take the ancient oath of office unto the citizens of London, and not that oath which is prescribed by the 3rd of George I, chap. 15, to be taken by all

other Sheriffs; for, as the Sheriffs of London are elected, and not constituted by Letters Patent, they are excused from taking any oaths unto the King, excepting those of allegiance and supremacy; after which, having executed the indentures of the delivery of the prisons, and passed through all the other usual formalities, they from that instant are charged with that important and hazardous trust; and the very next day after, unless it happen to be Sunday, preside at the election of a new Lord Mayor, and, the day following, are to be presented by the Recorder, attended by the Court of Aldermen, unto the Cursitor, or any other, or all the Barons of the Exchequer attending at Westminster for that purpose; which again is a conditional formality to be performed in pursuance of the direction of the second charter of King John, by which the Sherifwick of London and Middlesex is farmed unto the citizens of London for three hundred pounds a year, and whereupon it is granted, "That they amongst themselves may make Sheriffs whom they will, and may amove them when they will, and those whom they make Sheriffs they shall present unto the King's justices at the Exchequer;" but nothing further is required than barely that they shall be presented; for it is particularly

provided, by the charters of Edward I. and Charles I. "That the Sheriffs of London shall not be compelled to take any oath at the Exchequer, except upon yielding up their accounts:" the reason therefore of their being presented seems to be in order that the King, by his justices, may be informed unto whom all his writs are to be directed for levying the fines, rents and farms due unto the crown, and for executing all other duties that appertain to their office.*

In this manner the Lord Mayor and Sheriffs are, in the ordinary course, annually proposed, long before they enter upon their office, that they may have sufficient time to prepare and settle all matters for the due execution of so great a trust.

But, as the annual Ward officers are charged to the execution of their respective duties immediately upon their election, they should accordingly be sworn immediately by the presiding Alderman, or his deputy, before the breaking up of the Wardmote; for, as he holds

* For this reason every Sheriff, though elected in the time of vacation, is nevertheless presented unto one or other of the Barons of the Exchequer, notwithstanding that there is the same proviso in the charter of Edward I. That the Sheriffs, as well as the Lord Mayor, if chosen, when the King's Justices are not at Westminster, may be presented to the constable of the Tower.

the Court by an authority from the Lord Mayor, he has the power, during its continuance, and no longer, to tender the oaths of office to the persons there elected ; but, upon its being dissolved, all the proceedings must be returned to the Lord Mayor, who, as chief Steward of all the Wardmote-Courts within the City, may at any time after administer the oaths to those who were omitted to be sworn before the Alderman or his deputy.

It is by virtue of this authority that the Lord Mayor himself presides in person, or by his *locum tenens*, at every Wardmote held for the election of a new Alderman, in which, having gone through all the proceedings that may be required, and made his final declaration, he is afterwards at the next Court of Aldermen, to return the person so by him declared to be elected ; and thereupon it is provided by the act of Common-Council, of August 9, 1710, Garrard, Mayor, "That such newly chosen magistrate shall be summoned, on the next Court of Aldermen following, personally to appear at the inner chamber of the Guild-Hall, and there take upon him the charge of Alderman of the City, and of the Ward for which he was chosen ; which, if he then refuse to do without any excuse alleged

of his insufficiency with respect of fortune, he forfeits the sum of five hundred pounds," as before-mentioned ; but, if he appears, and is ready to accept the charge, he must be sworn and admitted by that Court, which is concluded by the return and report of the Lord Mayor, and has no power to reconsider the proceedings of the Wardmote upon the petition of any of the electors ; for although such re-examinations may have been formerly submitted to by some Lord Mayors, at times when the inhabitants of the several Wards of the City had only the liberty of nominating four or two persons unto the Court of Aldermen, out of which they were to choose one, yet all further debates in that Court concerning the merits of such elections are now expressly provided against by the act of Common-Council of April 26, 1714, Stanier, Mayor, which reciting, "That the ways of electing and presenting more than one person to the Court of Aldermen had been found to be very inconvenient, and to create unnecessary difficulties in settling such elections in cases where contests arose;" therefore enacts, "That freemen inhabitants, according to ancient custom, shall elect only one person, which person so chosen shall be returned by the Lord Mayor, or other person duly autho-

rized to preside in his stead, unto the Court of Aldermen ;” and then follows a peremptory direction, “That the person so returned shall be by them admitted and sworn well and truly to execute the said office.”

Upon the whole, they who are dissatisfied with the declaration made, at the election of any magistrate or officer of the City whatsoever, may apply for their remedy to the Court of King’s Bench at Westminster, from whence a writ of mandamus may be obtained to admit such person as shall be suggested to have been duly elected ; to which, if they to whom such writ is directed make a return, and deny the suggestion, the contending parties may join issue upon the merits, and proceed to a fresh trial ; and, after the counsel, as scrutineers on both sides, have re-examined the evidence upon each objection, the qualification of every voter must be submitted to the direction of the Court, and the right of election will at last be determined by the verdict of a jury.

The purport therefore of what is here offered is to point out such a regular method of proceeding, as may most likely guide the contending parties to the decision of their own disputes amongst themselves, without being under the disagreeable necessity of

making appeals elsewhere, which are always attended with the addition of a larger expense, and a longer continuance of their heats and dissensions; and, since this treatise was written with no other view than thus to establish, as near as possible, the peace and union of neighbours and fellow-citizens, the obtaining so desirable an end will recompense all the trouble of the undertaking, and answer the only design of its publication.



APPENDIX.



The 11th GEORGE I. CAP. XVIII.

An Act for regulating Elections within the City of London, and for preserving the Peace, good Order, and Government of the said City.

PASSED 20th APRIL, 1725.

[PREAMBLE.]

WHEREAS of late years great controversies and dissensions have arisen in the City of *London* at the Elections of Citizens to serve in Parliament, and of Mayors, Aldermen, Sheriffs and other Officers of the said City; and *many evil-minded Persons, having no right of voting, have unlawfully intruded themselves into the Assemblies of the Citizens, and presumed to give their Votes at such Elections, in manifest violation of the Rights and Privileges of the Citizens, and of the Freedom of their Elections, and to the disturbance of the public peace: And whereas great numbers of wealthy Persons, not free of the said City, do inhabit and carry on the Trade of Merchandize and other Employments within the said City, and refuse or decline to become Freemen of the same by*

reason of an antient Custom within the said City restraining the Freemen of the same from disposing of their Personal Estates by their last Wills and Testaments : And whereas great dissensions have arisen between the Aldermen and Commons of the Common Council of *London* in or concerning the making or passing of Acts, Orders, or Ordinances in Common Council, which, if not timely settled and determined, may occasion great obstructions of the public business and concerns of the said City, and create many expensive controversies and suits at law, and be attended with other dangerous consequences : now to the intent that suitable remedies may be provided for preserving the Privileges of the City of *London*, and the Freedom of Elections therein, and for settling the right of such Elections, and putting a stop to the aforesaid controversies and dissensions, and the ill consequences of the same, and that a constant supply may be had of able Officers, capable of supporting the dignity of and maintaining good Order and Government within that antient, populous, and loyal City, which is of the greatest consequence to the whole Kingdom :

No. I.

[*Of the Method of taking and granting a Poll.*]

Be it enacted that at all times from and after the first day of *June*, 1725, upon every Election of a Citizen or Citizens to serve for the said City

of *London* in Parliament, and upon all Elections of Mayor, Sheriffs, Chamberlain, Bridge-masters, Auditors of Chamberlain's and Bridgemasters' Accounts, and all and every other Officer and Officers to be chosen in and for the said City by the Liverymen thereof, and upon all Elections of Aldermen and Common Councilmen chosen at the respective Wardmotes of the said City, the presiding Officer or Officers at such Elections shall, in case a Poll be demanded by any of the Candidates, or any Two or more of the Electors, appoint a convenient number of Clerks to take the same; which Clerks shall take the said Poll in the presence of the presiding Officer or Officers, and be sworn by such Officer or Officers, truly and indifferently to take the same, and to set down the name of each Voter, and his place of Residence or Abode, and for whom he shall poll; and to poll no Person who shall not be sworn, or, being a *Quaker*, shall not affirm according to the direction of this Act; and every Person before he is admitted to poll at any Election of any Citizen or Citizens to serve in Parliament, or of any Officer or Officers usually chosen by the Liverymen of the said City, shall take the Oath herein-after mentioned, or, being one of the people called *Quakers*, shall solemnly affirm the effect thereof; that is to say:

“ You do swear, That you are a Freeman of *London*, and a Liveryman of the Company of
and have so been for the Space

of twelve Calendar Months; and that the Place of your Abode is at in and that you have not polled at this Election.

So help you GOD."

And in case of any Election of any Alderman or Common Councilman, every person, before he is admitted to poll, shall take the Oath herein-after mentioned, or, being One of the People called *Quakers*, shall solemnly affirm the Effect thereof; that is to say,

"You do swear, That you are a Freeman of *London*, and an Householder in the Ward of and have not polled at this Election. So help you GOD."

And if any Person or Persons shall refuse or neglect to take the Oaths hereby respectively appointed to be taken, or, being a *Quaker*, shall refuse or neglect to make such solemn affirmation as aforesaid, then and in every such case the Poll or Vote of such Person or Persons so neglecting or refusing shall be null and void, and as such shall be rejected and disallowed.

II. That at all times from and after the said first day of *June*, 1725, upon every Election of such Citizens, or Officers, by the Liverymen of the said City, and upon every Election of such Officer or Officers at any Wardmote of the said City, all and every Person and Persons having a right to vote or poll at such Election or Elections shall, before he be admitted to vote or poll thereat, (if

required by any of the Candidates, or any two or more of the Electors,) first take the Oaths by an Act made in the first year of His Majesty's Reign, intituled *An Act for the further Security of His Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors*, appointed to be taken, or, being one of the people called *Quakers*, shall, if required, as aforesaid, solemnly affirm the effect thereof; and if any person or persons shall, being required thereunto, refuse or neglect to take the said Oaths, or to affirm the effect thereof, that then the Poll or Vote of such person or persons, so neglecting or refusing shall be null and void, and as such be rejected and disallowed; and the presiding officers at all and every the respective Elections aforesaid, and such sworn clerks as shall be by them appointed, are authorized and empowered to administer the above-mentioned Oaths and Affirmations; and if any such presiding officer or sworn clerk, shall neglect or refuse so to do, or shall otherwise offend in the premises, contrary to the true intent and meaning of this Act, every such Officer and sworn clerk shall for every such offence forfeit the sum of sixty pounds, besides costs of suit.

III. That if any person or persons shall wilfully, falsely, and corruptly take the said Oaths or Affirmations appointed by this Act, or either of

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them, and be thereof lawfully convicted by Indictment or Information; or if any person or persons shall corruptly procure or suborn any person to take the said Oaths or Affirmations, or either of them, whereby he shall wilfully and falsely take the said Oaths or Affirmations, or either of them, and the person so procuring or suborning shall be thereof convicted by Indictment or Information; every person so offending shall for every such offence suffer such penalties, forfeitures, and disabilities as persons convicted of wilfull and corrupt perjury at the Common Law are liable unto.

No. II.

In what time a Poll shall be begun and finished.

IV. And to the intent that the Poll at every such Election may be expeditiously and duly taken, it is enacted, that if a Poll shall be demanded at any of the Elections before mentioned, the presiding officer or officers at such Election shall begin such Poll the day the same shall be demanded, or the next day following at furthest, unless the same shall happen on a *Sunday*, and then on the next day after, and shall duly and orderly proceed thereon from day to day (*Sundays* excepted) until such Poll be finished; and shall finish the Poll at Elections by the Liverymen within seven days, exclusive of *Sundays*; and the Poll at the Wardmote within three days, exclusive of *Sundays*, after the commencing the same respectively;

and shall, upon adjourning the Poll on each day, seal up the Poll Books with the seals and in the presence of such of the respective Candidates, or persons deputed by them, as shall desire the same; and the said Poll Book shall not be opened again but at the time and place of meeting in pursuance of such adjournment; and after the Poll is finished, the said Poll Books, being sealed as aforesaid, shall within two days after be publicly opened at the place of Election, and be duly and truly cast up; and within two days after such casting up, the numbers of the Votes or Polls for each Candidate shall be truly, fairly, and publicly declared to the Electors at the place of Election by the officer or officers presiding at such Election.

No. III.

In what manner and within what time a Scrutiny is to be carried on and ended.

And if a Scrutiny shall, upon such declaration be lawfully demanded, the same shall be granted and proceeded upon, and the respective Candidates shall immediately nominate to the presiding officer or officers at such Elections, any number of persons qualified to vote at such Election, not exceeding six, to be Scrutineers for and on behalf of the Candidate or Candidates on each side, to whom the presiding officer or officers at such Elections shall, within six days next after such Scrutiny shall be demanded, upon request and at

the charge of the Candidate or Candidates, or any of the Scrutineers on his or their behalf, deliver or cause to be delivered to him or them a true copy, signed by such officer or officers, of the Poll taken at such Election; and all and every the Scrutinies to be had or taken upon any Election to be made by the Liverymen of the said city shall begin within ten days after the delivery of the copies of the said Polls, and be proceeded on day by day (*Sundays* excepted), and shall be finished within fifteen days after the commencement of such Scrutiny; and thereupon the presiding officer or officers shall, within four days after the finishing such Scrutiny, publicly declare at the place of such Election which of the Candidates is or are duly elected, and the number of legal Votes for each Candidate appearing to him or them upon such Scrutiny; and on the Election of any officer or officers at the respective Ward-motes of the said City, if a Scrutiny be demanded, the Candidates, or Scrutineers nominated on their behalf respectively, shall, within ten days next after the receipt of the copy or copies of the Polls taken at such Election, deliver or cause to be delivered to the presiding officer or officers the names in writing of the several persons who have polled in the said Election, against whose Votes they shall object, with the particular objections against each respective name; and the presiding officer or officers shall thereupon, within three days then next following, at the request

and charges of any Candidate or Candidates, or the Scrutineers named on his or their behalf, deliver or cause to be delivered to him or them one or more true copy or copies (signed as aforesaid) of the paper containing such names and objections as aforesaid; and the said presiding officer or officers, within ten days then next following (exclusive of *Sundays*), after having fully heard such of the said Candidates as shall desire the same, or some person appointed by him or them, touching such objections, shall, at or in the place of Election, openly and publicly declare which of the said Candidates is or are duly elected, and the number of legal Votes for each Candidate appearing to him or them upon such Scrutiny; and if the said presiding officer or officers, or any other person or persons, shall offend in the premises, every such offender shall forfeit for every such offence the sum of two hundred pounds, with full costs of suit, over and above all other penalties and forfeitures inflicted by any other Act of Parliament.

V. That after any Election made and Scrutiny taken, as is herein-before directed, the presiding officer or officers at such Election and Scrutiny shall deliver, under his or their hand or hands, a true List of the Voters disallowed upon such Scrutiny to any of the Candidates who shall, upon the final declaration of the Election, demand the same within six days after such demand made, such Candidate paying for the same: Provided

always, that no such List as is hereby directed to be given, nor any thing therein contained, shall be admitted to be given in evidence on any action or occasion whatsoever.*

VI. That the Mayor of the city of *London* for the time being, upon request to him made by any Candidate or Candidates, his or their Agent or Agents, at any Election of a Citizen or Citizens to serve in Parliament for the said city, or of a Mayor, or any other officer or officers to be chosen by the Liverymen thereof, where a Scrutiny is demanded and granted, shall issue his precepts as has been usual, requiring the Masters and Wardens of the Livery Companies of the said city respectively to cause their clerks forthwith to return to him two true Lists of all the Liverymen of their respective Companies, and the said clerks shall return such their respective Lists upon oath within three days after the receipt of any such precepts; one of which Lists so returned the said Mayor shall forthwith deliver or cause to be delivered to the Candidate or Candidates on each side at such Election, or to his or their Agent or Agents respectively.*

No. IV.

Qualification at Wardmote Elections.

VII. And whereas divers controversies and disputes have arisen in the said city of *London* touching the right of Election of Aldermen and

* [Added to the Bill by the Lords.] Ed.

Common Councilmen for the respective Wards of the said city; for quieting all such disputes and controversies for the future, it is hereby further enacted, that from and after the first day of *June*, 1726, the right of Election of Aldermen and Common Councilmen, for the several and respective Wards of the said city, *shall belong and appertain to Freemen of the said city of London, being Householders paying Scot as herein-after is mentioned and provided, and bearing Lot when required in their several and respective Wards, and to none other whatsoever.*

No. V.

Definition of the term Householder.

VIII. That the Houses of such Householders be respectively of the true and real value of ten pounds a year *at the least*; and that such Householders be respectively the sole *Occupiers* of such houses, and have been actually in the possession respectively of a house of such value in the Ward wherein the Election is made, by the space of twelve calendar months next before such Election.

No. VI.

Definition of the term Scot.

IX. And for the better ascertaining what are the rates and taxes to which *such Householders ought to contribute and pay their Scot*, the same

are hereby declared to be a rate to the Church, to the Poor, to the Scavenger, to the Orphans, and to the rates in lieu of or for the Watch and Ward, *and such other annual rates as the citizens of London, inhabiting therein*, shall hereafter be liable unto, **OTHER THAN AND EXCEPT ANNUAL AIDS GRANTED OR TO BE GRANTED BY PARLIAMENT**; and in case any *such Householder*, within the space aforesaid, shall have been rated and charged, and contributed and paid his Scot to all the said rates or taxes, or thirty shillings a year to all or some of them, **EXCEPT AS AFORESAID**, every such person shall be deemed and taken to be a person paying of Scot.*

X. Provided always, that *such Householder*, within the space aforesaid, shall have been rated or charged, and contributed or paid his Scot to all and singular the rates and taxes (**OTHER THAN AND EXCEPT ANNUAL AIDS GRANTED BY PARLIAMENT**) whereunto the Citizens of *London*, inhabiting therein, are or shall be liable, or shall have paid in the whole to the said rates and taxes, or some of them, **EXCEPT AS AFORESAID**, thirty shillings a year at least.

No. VII.

Extended Franchise as to Partners in Trade.

And in case any *two or more Partners* carry on a joint trade in any such house together, and shall have been *Householders of such house* by

* [Added to the Bill by the Lords.] Ed.

such space of time as aforesaid, *such Partners shall, paying their Scot in manner aforesaid, and bearing their respective proper Lots, if required, have Votes at the Elections aforesaid, so as such house wherein such Partners carry on their trade be of the true and real yearly value of as many respective sums of ten pounds a year, computed together, as there are Partners.*

No. VIII.

Limitation of Franchise as to Inhabitants.

XI. Provided also, that where *two persons and no more*, not being Partners, shall have, by the space aforesaid, *severally inhabited in the same house*, such two persons, *severally paying their Scots, and bearing their respective Lots as aforesaid*, shall have Votes at the Elections aforesaid, so as such house wherein such two persons inhabit be of the true and real yearly Value of twenty pounds and upwards, and that each of the said persons doth pay the yearly rent of ten pounds at the least for his respective part of such house.

XII. That nothing in this Act contained shall extend or be construed to extend to oblige any person or persons *to pay any Scot, or bear any Lot, from the doing of which they are or shall be exempted and discharged by Act of Parliament, Charter, or Writ of Privilege; but that such person and persons so exempted and discharged shall*

and may vote at any Election of any Alderman, Common Councilman, or other officer usually chosen at the Wardmotes of the said city, notwithstanding he or they shall not have borne such Lot, or paid such Scot, in such manner as he or they should or might have done in case this Act had not been made, and no otherwise.

XIII. And to the Intent that the *Citizens and Inhabitants of London* may have a proper remedy and relief in case they or any of them shall be aggrieved by any tax, rate, or assessment made in or for the said City, or by any misbehaviour of any officer in relation thereto, or to the collecting the same; it is enacted, that it shall be lawful for all and every person and persons who shall be aggrieved by any of the assessments made in or for the said city, towards payment of the rate or tax for the Orphans, and also to the rate or tax in lieu of or for keeping Watch and Ward in the said city, or by any breach or neglect of duty committed by any officer concerning the same, to appeal in respect thereof to the Mayor and Court of Aldermen of *London*; and it shall be lawful to and for any such person or persons, in case he or they shall be in anywise aggrieved by any other rate or assessment that shall be made in or for the said city, or any the Wards, Precincts, Parishes, or Inhabitants of the same, or by any breach or neglect of duty committed by any officer relating thereto, to appeal to the proper persons unto

whom by law such Appeal lies ; and the said Mayor and Court of Aldermen, and the said other persons to whom such Appeal shall be lawfully made respectively, shall and may hear and finally determine the matter so complained of, and correct and settle the said rates.

No. IX.

What Liverymen are excluded from voting at a Common Hall.

XIV. That no person or persons whatsoever shall, from and after the said first day of *June*, 1725, have any right or title to vote at any Election of a Citizen or Citizens to serve in Parliament for the said city, or of any Mayor or other officer or officers to be chosen by the Liverymen thereof, who have not been upon the Livery twelve calendar Months before such Election, and who shall not have paid their respective livery fines, or who, having paid the same, shall have received such fines back again in part or in all, or shall have had any allowance in respect thereof.

No. X.

General Disqualification of Voting at all Elections within the City of London.

And no person or persons whatsoever shall have any right to vote at any Election of a Citizen or Citizens to serve in Parliament, or of any Mayor,

Alderman, or other officer or officers of or for the said city, or any the Wards or Precincts thereof, who have at any time within the space of two years next before such Election or Elections, requested to be and accordingly have been, discharged from paying to the rates and taxes to which the Citizens of *London* inhabiting therein are or shall be liable *as aforesaid*, or any of them, or have within the time aforesaid, had or received any alms whatsoever, and the Vote of every such person shall be void.

XV. And to the intent that a final end may be put to all disputes between the Mayor and Aldermen and the Commons of the Common Council of the said city touching the making or passing of Acts, Orders, or Ordinances in Common Council, and that no Act, Order, or Ordinance may for the future be made or passed in Common-Council without the full consent of the representative body of the said city, according to the ancient constitution of the same; be it enacted that no Act, Order, or Ordinance whatsoever, at any time from and after the said first day of *June*, 1725, shall be made or passed in the Common Council of the said city without the assent of the Mayor and Aldermen present at such Common Council, or the major part of them, nor without the assent of the Commons present at such Common Council, or the major part of them.*

* [This section, so far from attaining its professed object of putting an end to all disputes, inflamed them to such a degree

XVI. That nothing in this Act contained to extend to any Election, Nomination, or Appointment in Common Council of any Common Serjeant, Town Clerk, Judges of the Sheriffs Court, Coroner, Common Cryer, Commissioners of Sewers, Garbler, and the Governor and Assistants of *London* of the new Plantation of *Ulster* in *Ireland*; but that the Election, Nomination, or Appointment of all or any of the said Officers shall and may, from and after the said first day of *June*, 1725, be made by the Mayor, Aldermen, and Commons in Common Council assembled, or the major part of them; any thing in this Act contained to the contrary thereof notwithstanding.

Custom of London as to Personal Estates.

XVII. And to the intent that persons of wealth and ability, who exercise the business of Merchandize, and other laudable employments within the said city, may not be discouraged from becoming free of the same by reason of the custom restraining the Citizens and Freemen thereof from disposing of their Personal Estates by their last Wills and Testaments; it is further enacted, that it shall and may be lawful for all and every person and persons who shall, at any time from and after the said first day of *June*, 1725, be made free of the said city, and also for all and every

that the clause was at length repealed by Stat. 19th Geo. II. cap. 8.] Ed.

person or persons who are already free of the said city, and on the said first day of *June*, 1725, shall be unmarried, and not have Issue by any former marriage, to give, devise, will, and dispose of his and their Personal Estate and Estates to such person and persons, and to such Use and Uses, as he or they shall think fit; any custom or usage of or in the said city, or any Bye Law or Ordinance made or observed within the same, to the contrary thereof in any wise notwithstanding.

XVIII. Provided nevertheless, that in case any person who shall at any time from and after the said first day of *June*, 1725, become free of the said city, and any person or persons who are already free of the said city, and on the said first day of *June*, 1725, shall be unmarried, and not have Issue by any former marriage, hath agreed or shall agree by any writing under his hand, upon or in consideration of his marriage or otherwise, that his Personal Estate shall be subject to, or be distributed according to the custom of the city of *London*; or in case any Person so free, or becoming free as aforesaid, shall die intestate; in every such case the Personal Estate of such person so making such agreement or so dying intestate shall be subject to and be distributed according to the custom of the said city; any thing herein contained to the contrary in anywise notwithstanding.

[Alteration of Oath of Freemen.]

XIX. And it is further enacted, that there shall, from and after the said first day of *June*, 1725, be omitted and left out of the Oath of a Freeman of the said city the words following, that is to say "[Ye shall know no Foreigner to buy or sell any Merchandize with any other Foreigner within the City, or the Franchise thereof, but ye shall warn the Chamberlain thereof, or some Minister of the Chamber]," and also these words following, that is to say "[Ye shall implead or sue no Freeman out of the city whilst ye may have right and law within the same city]," and after these words "[Ye shall take no Apprentice]" the words immediately following shall also be omitted, that is to say "[but if he be Freeborn, that is to say no Bondsman's son, nor the child of any Alien]," and for "[no]" and instead thereof these words "[for any]" shall be inserted in the said Oath.

Distribution of Forfeitures.

XX. And be it enacted, that all and every the forfeitures hereby inflicted shall be distributed in manner following; that is to say, one third part thereof to the King's most Excellent Majesty; one third part thereof to the Chamberlain of the said city to the use of the Mayor, Commonalty, and Citizens of the said city, and the remaining

third part thereof to him or them that will sue for the same within six calendar months next after the same shall be incurred; to be recovered by Action of Debt, Bill, Plaint, or information, in any of His Majesty's Courts of Record at *Westminster*, wherein no Essoign, Privilege, Protection, or Wager of Law, shall be allowed, nor any more than one Impar lance.

XXI. This Act to be a Public Act, &c.

No. XI.

The disabling clause in the Statutes, 9th Geo. II. ch. 20, sec. 13, and the 10th Geo. II, ch. 22, sec. 10, with regard to the neglect or refusal to pay the Lamp or Watch rates.

AND, to the end that the payment of the said rates and assessments for the purposes aforesaid may be effectually enforced, be it further enacted, &c. that every freeman of London, liable to pay the rates and assessments as aforesaid, who shall have neglected or refused to pay the said rates and assessments to the person or persons authorized and empowered to collect and receive the same (the same having been lawfully demanded),*

* These words (the same having been lawfully demanded), are not inserted in the clause of the lamp act. [The 11 Geo. III, cap. 29, "for consolidating, extending and rendering more effectual the powers granted by several Acts of Parliament for making, enlarging, amending and cleaning the Vaults, Drains and Sewers, within the city of London and the Liberties thereof, and for paving, cleansing and lighting the same and preventing obstructions there-

or shall have desired to be excused from paying such rates and assessments, shall be under *the same incapacity of voting at elections* within the said city of London, *as any person or persons now is or are, who do not pay their scot and lot* to the several yearly rates and taxes to which the citizens of London are at this time liable.

No. XII.

The form of a general objection to be delivered upon a scrutiny at the election of an Alderman or Common-Councilman, to be introduced as followeth.

WE whose names are here under-written, being nominated to be Scrutineers for and on be-

in;” contains a clause similar to the above, having the effect of placing the “Consolidated Rate” and the “Sewer Rate” in the exact position of their antecedents constituting the Scotting by virtue of the 11th Geo. I; viz.—“That for the more effectual enforcing the payment of the said rates and assessments, any freeman of London liable to the same [the assessment being limited to houses of £10 rental, and rated to the poor upon that valuation,] who shall have neglected or refused paying the same or any part thereof after demand made: or if any such freeman shall, in respect of poverty or inability, have desired to be and accordingly has been excused from the payment of any such rate, he shall be incapacitated from voting at elections within the city of London as any persons now are, who do not pay their yearly Scot and Lot to any of the yearly rates and assessments to which the Citizens of London are at this time or hereafter shall become liable.] —Ed.

half of J. S. candidate for the office of
within the Ward of at a
Wardmote held on the day of and
continued by adjournment for the purpose of
taking and finishing the election of such officer,
do object against the several persons who have
polled at the said election for J. N. another can-
didate for the said office, for the particular reasons
written against each of their respective names, viz.
—We object against A. B.—For that he is not a
freeman of London : nor a householder ; nor the
sole occupier of a house ; nor hath been actually
in the possession of a house within the said Ward,
of the true and real value of ten pounds a year by
the space of twelve calendar months next before
the said election ; and for that he hath not been
rated and charged, and contributed and paid,
within the space aforesaid, his scot to the rate to
the church ; to the poor ; to the scavenger ; to
the orphans ; and to the rate in lieu of and for the
Watch and Ward ; and to the rate for enlightening
the streets of the City of London ; and to the rate
for the better regulating the nightly watch and
beadles within the City of London and liberty
thereof ; and to such annual rates as the citizens
of London, inhabiting therein, are liable unto, or
thirty shillings a year to all or some of them ; and
for that he hath refused to bear his lot when re-
quired in the said Ward ; and for that he hath,
within the space of two years next before the said
election, requested to be, and accordingly has

been discharged from paying to the rates and taxes to which the citizens of London, inhabiting therein, are liable, or to some, or one of them; and for that he hath within the time aforesaid had and received alms.*

No. XIII.

The Oath of the Lord Mayor.

You shall swear that ye shall serve well and truly our Sovereign Lord King George the Third, in the office of mayoralty of the City of London; and the same City ye shall keep surely and safely unto the use of our said Sovereign Lord the King and his heirs, Kings of Great Britain; and the profit of the King ye shall do in all things that to you belongeth, and the right of the King, and that which belongeth unto the crown, you shall truly keep; you shall not assent to any decrease nor concealment of the rights nor of the franchises of the King, and there where ye may know the rights of the King, or of the crown, be it in lands,

* In this objection are included all partners and several inhabitants, as well as sole occupiers of a house; for partners and several inhabitants, being equally obliged to be in possession of a house, or part of a house, and chargeable thereto, should they be deficient in these points, they must come under the general implication of not being householders within the Ward paying scot and bearing lot, &c. Consequently, every one of them may be separately objected against.—For that he is not a Householder, &c.

rents, or in franchises, or in suits concealed or withdrawn, you shall put your power to call it again, and, if you may not do it, you shall tell it unto the King, or to those of his council of whom ye shall understand for to be certain that they shall inform the King thereof, and you shall truly and right wisely treat the people of your Baliwick, and right you shall do to every person, as well to strange as to privy, to poor as to rich, in that belongeth to you to do, and that for highness nor for riches, for gift, promise, favour, nor place, ye shall no wrong do to any person, nor to no man ye shall the right let; ye shall not take by which the King shall lose, or by which the right may be letted, and also that you shall set good keeping upon the assize of bread, wine, ale, fish, flesh, corn, and of all other victuals, and also of weights and measures, in the said city, doing sad and due execution upon the defaults that there shall be found, according to all the statutes thereof made not repealed, and that in all things to the mayor of the said city, belonging for to be done well and truly ye shall have you and do.

So help you God.

No. XIV.

The Oath of an Alderman.

YE shall swear, that ye shall well and lawfully serve our Sovereign Lord the King in the City of London in the office of Alderman in the Ward of

N— wherein ye shall be chosen Alderman, and every other Ward whereof ye shall be chosen Alderman hereafter ; and lawfully ye shall entreat the people of the same Ward of such things as to them appertaineth to do for the keeping of the City, and for maintaining of the peace in the same ; and the lands and franchises of the City ye shall keep and maintain, within the City and without, after your wit and power ; and attendant ye shall be to maintain the right of orphans after the laws and usage of the same City ; and ready ye shall be to come at the summons and warning of the Mayor and Ministers of this City for the time being, to speed the assizes, pleas and judgments of the Hustings, and other needs of this City, if you be not let by the needs of the King, or by some other reasonable cause ; and good and lawful council ye shall give for such things as touch the common profit of the City ; and ye shall sell no manner of victual by retail, as bread, ale, wine, flesh, nor fish, by your apprentices, allowes, servants, ne by any other way, ne profit shall ye none take of any such manner of victual so sold during your office. The secrets of this Court ye shall keep, and not disclose any thing here spoken for the commonwealth of this City, or that might hurt any person or brother of this said Court, unless it be spoken to your brother or to any other, which in your conscience and discretion ye shall think to be for the common-wealth of this City ; and well

and lawfully ye shall behave you in the said office, and in all other things touching the said City.

As God you help.

No. XV.

The Oath of the Sheriff.

YE shall swear, that ye shall be good and true unto our Sovereign Lord the King of England and unto his heirs and successors, and the franchise of the City of London, within and without, ye shall save and maintain to your power; and ye shall well and lawfully keep the shires of London and Middlesex, and the offices that to the same shires appertain to be done well and lawfully, ye shall do after your wit and power; and the right ye shall do as well to poor as rich, and good custom you shall none break, ne evil custom arrere, and the assize of bread, ale, and all other victuals within the franchise of this city, and without, well and lawfully ye shall keep, and do to be kept, and the judgments and executions of your Court ye shall not tarry without cause reasonable; ne right shall you none disturb. The writs that to you come touching the state and franchise of this city you shall not return till you have showed them to the Mayor and the Council of this city for the time being, and of them have advisement; and ready you shall be at reasonable warning of the Mayor, for keeping of the peace, and maintaining the state of this city; and all other things that longen

to your office, and the keeping of the said shires, lawfully you shall do, by you and yours, and the city you shall keep from harm after your power, and the shire of Middlesex ; ne the goal of Newgate you shall not let to farm.

As God you help.

[*Addition.*]

YE shall also swear, that he shall freely give all such all rooms and offices of Serjeants and Yeoman as shall happen to become void, during the time ye shall remain in the office of Shrievalty, to such apt and able person or persons as shall be by you nominated to the Lord Mayor and Court of Aldermen, and by them admitted, without any money, or other reward, to be had, taken, or hoped for in respect thereof, according to the act of Common-Council made and provided in that behalf, the 29th day of April, in the 26th year of the reign of our Sovereign Lady Queen Elizabeth, &c.

As God you help.

No. XVI.

The Oath of the Common-Council Men.

YE shall swear, that ye shall be true to our Sovereign Lord the King that now is; and readily come when ye be summoned to the Common-Council of this City, unless ye be reasonably excused; and good and true counsel ye shall give in all things touching the common weal of this

City, after your wit and cunning ; and that, for favour of any man, ye shall maintain no singular profit against the common profit of this City ; and, after that ye be come to the Common-Council, ye shall not from thence depart till the Common-Council be ended without reasonable cause, or else by the Mayor's licence : and also, that all secret things that be spoken or said in the Common-Council, the which ought to be kept secret, ye shall in no wise disclose.

As God you help.

No. XVII.

The Oath of the Lamp Collectors.

You swear, that you will faithfully and diligently ask for, collect, and receive the several rates and assessments, payable by each inhabitant of such precinct wherein you are, or shall be, appointed collector within this ward, for defraying the expense for enlightening the same, pursuant to the statute of the 9th George II. entitled, an Act for the better enlightening the streets of London ; and that you will render and bring in your accounts to the Alderman of the said Ward, of all the several sums of money by you received, and give in a list of such persons as shall have neglected or refused to pay the said rates and assessments, according to the direction of the said statute.

So help you God.

No. XVIII.

[The Oath of the Constables.]

YE shall swear, that ye will keep the peace of our Sovereign Lord the King, well and lawfully after your power, and ye shall arrest all them that make contest, riot, debate, or affray, in breaking of the said peace, and lead them to the house or compter of one of the Sheriffs. If ye be withstood by the strength of the misdoers, ye shall rear on them an outcry, and pursue them from street to street, and from Ward to Ward, till they be arrested,* and ye shall search at all times, when ye be required by the scavengers or beadles, the common nuisance of your Ward, and the beadle and raker ye shall help to rear and gather in their salary and quarterage, if ye be thereunto by them required. And, if any thing be done within your Ward, against the ordinance of this City, such defaults, as ye shall find there done, ye shall them present to the Mayor and Ministers of this City. And, if ye be letted by any person or persons that you may not duly do your office, ye shall certify the Mayor, and Council of the City of the name or names of him or them that let you. Ye shall also

* [The ancient oath of the Constable terminated here, and is distinct evidence that however his duties may afterwards have been extended—his original office was confined to the preservation of the peace by Watch and Ward.] Ed.

swear, that during the time ye shall stand in the office, and occupy the room of a constable, ye shall once at least every month certify, and show to one of the clerks of the Mayor's Court, and in the same Court, as well the names and sir-names of all freemen, which ye shall know to be deceased within the month in the parish wherein ye be inhabited, as also the names and surnames of all the children of the said freemen so deceased, being orphans of this City. And you shall inquire of all and every of the offences done contrary to the statutes made in the 1st, 4th, and 21st of James I. to restrain the inordinate haunting and tippling in inns and alehouses, and for suppressing of drunkenness and other disorders, and thereof presentments make according to the same statutes. Ye shall also do your endeavour, that the laws made for the observation of the Lord's day, and for suppressing of vagrants, be duly put in execution. In these and all other particulars belonging to the office of a constable you shall well and diligently perform your duty to the best of your knowledge and power. And thus ye shall not leave to do,

As God you help.

No. XIX.

[The Oath of the Scavengers.]

Ye shall swear that ye shall diligently oversee that the pavements within your Ward shall be well and sufficiently repaired and not made too

high in nuisance of your neighbours : and that the ways, streets, and lanes be cleared of dung and all manner of filth for the cleanliness of this City. And if ye find any of the defaults aforesaid, which you cannot remove, ye shall show it to the Alderman of your Ward, so that he may ordain for the amendment thereof. And thus ye shall do,

As God you help.

No. XX.

[The Oath of the Wardmote Inquest Men in their several Precincts.]

You, and each of you, do swear, that you will faithfully and diligently inquire, and true presentment make of all such nuisances, misdemeanors, defaults and negligences, which you shall find to be committed in the precinct to which you belong within this Ward, contrary to the articles of the charge delivered to you ; the King's counsel, your companions, and your own, you shall keep secret and undisclosed ; you shall present no man for envy, hatred, and malice, nor spare any man for fear, favour or affection, or any hope or promise of a reward, but according to the best of your knowledge, and the information you shall receive, you shall present the truth,

So help you God.

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ADDENDA ET CORRIGENDA.



P. xl, l. ult., for hat read that.

P. lxxx n., l. 3 & 4, for Peregrinonum, read Peregrinorum.

P. lxxxlii n., l. 14, for Communiam Civitatis Londonia, read Communam Civitatis Londoniæ.

P. lxxxvi n., l. 10, add: the Burillers' gild also, in the 29th Edw. I, was under the rule of an Alderman—"nearly the last head of a trade gild," observes Mr. Herbert, "who then retained the title, as all the wards had their respective aldermen some time before."—Hist. Twelve Comp., v. i, p. 26. Vide Introd., p. cexxxii.

P. lxxxviii n., l. 5, for St. Armand, read St. Amand.

P. xciv, l. 4, for Warsd, read Wards.

P. xcix n., l. 4, for Cnıxtengılđ, read Cnıxtengılđ

P. ci, n. t, add: An Aldermanry in Lincoln, also, was hereditary in the family of De Holm (Claus. Rot. 2 H. III, m. 17).—Madox.

P. ciii, n., add: A similar collection in the Hundreds was called the Hundred peny.—Spelm. Gloss.

*P. civ, n. *, for Maritandum, read Muritandam.*

. cvi n, The difference in the assessments on the lay

and ecclesiastical Wards, seems accounted for by the statement of Polydore Vergil, that the church did not contribute to the aid on the occasion mentioned (*lib.* xix, p. 369); and, by referring to the early edition of Fabyan, it appears that the assessment on the ward of Portsoken was levied on *seven* persons, and that on Aldgate Ward on *six* inhabitants only; the whole of those Wards otherwise, it must be presumed, having been in the hands of the ecclesiastical fraternity, and exempted from the assessment.—*Vide p.* cclxxvii.

P. cxi n., add: The charter of Henry III to Adam Basing, will shew the nature of a city soc, and the jurisdictional powers and privileges of its lord within the Aldermanry :—

Henricus, Dei graciâ, Rex Angliæ, &c., archiep., episc., &c., salutem.

Sciatis nos concessisse, & hâc cartâ nostrâ confirmasse dilecto nobis Adæ de Bassing, civi nostro London' omnes donaciones subscriptas, viz. de dono Gervasil fil' Gervasil de Aldremannebur' totum managium in London' in Aldremannebur', quod fuit quondam ipsius Gervasil patris, ejusdem donatoris in longitudine et in latitudine, cum totâ placeâ terre ante dictum managium, & cum advocacione ecclesiarum B Marie de Aldremannebur' & S. Marie Magdalen in Melkestrete; et de dono Alani de Aldremannebur' advocacionem ecclesie S. Michælis de Bassishag. habend' et tenend' eidem Ade & heredibus, vel assignatis suis, liberè & quitè, benè, & in pace imperpetuum.

Concessimus eciam eidem, & hâc eâdem cartâ nostrâ confirmavimus predicto Ade, et heredibus vel assignatis suis, omnes libertates & liberas consuetudines quas Henricus Rex avus noster concessit Reynero de Aldremannebur', qui totum predictum managium aliquando tenuit, et quas postea Ricardus Rex avunculus noster concessit Gervasio de Aldremannebur', patri predictorum donatorum Gervasil & Alani, viz. quod predictus Ada & heredes vel assignati sui habeant & teneant omnes terras et posses-

siones suas infra civitatem London' et extra, ubicunque fuerint, cum advocacionibus ecclesiarum predictarum benè et in pace, liberè, quietè, et integrè, in boscis & planis, in pratis & pasturis, in culturis, in aquis, in stagnis, in molendinis, in viis, in semitis, in sepibus & fossatis, in vivariis, in piscariis, in mariscis, in cunctis locis & in rebus cunctis infra burgum et extra, cum soka et saka, & thol et theam, infangenethef & utfangenetheof, hamsocne, grith-bruche, blodwite, fridwite, sichtwyte, heyngwite & leyrwite, de omnibus causis que sunt vel esse possunt: et quod liberi sint ab omni scotto & geldo, tallagis, auxiliis, omnium vicecomitum & omnium ministrorum eorum, & de skyris & hundredis, sectis & assisis; & quod non ponantur in placitum de aliquà terrà, vel tenurà suà, nisi coram nobis, vel capitali justici' nostro: & si fortè contigerit quod appellentur de vità vel membris, non tractentur nisi secundum libertates civitatis London' nec pro aliquà quietancià aut libertatibus predictis eis concessis per dictam quietanciàm de libertatibus civitatis London'.

Quare volumus & firmiter precipimus pro nobis et heredibus nostris, quod predictus Ada & heredes vel assignati sui habeant et teneant totum predictum managium in London' in Aldremannebur', cum totà placeà terre antedictum managium, & cum advocacione predictarum ecclesiarum B. Marie de Aldremannebur', S'ce Marie Magdal' in Melkestrete, & S. Michaelis de Bassigehag' & cum omnibus aliis pertinenciis. Et quod habeant & teneant omnes terras & possessiones suas infra civitatem London' & extra, ubicunque fuerint, benè & in pace imperpetuum; cum omnimodis libertatibus & liberis consuetudinibus prescriptis, prout carte donatorum predictorum, tam predecessorum nostrorum quam aliorum in quibus plenius continentur, rationabiliter testantur, sicut prædictum est.

His testibus, &c. Dat' per manum nostram, apud Westm., x die Februarii, anno regni nostri xxxi (1247).—*Cart. Ant. in Tw. Lond.; Rym., Fœd., v. i, p. i, p. 266.*

P. cxiv n., add: The difference between the list of

Wards in 1284 (12 Edw. I) and 1339 (13 Edw. III), is as follows :

1284	1339
1. Warda Fori	Farringdon Without
2. Lodgate and Newgate .	Farringdon Within
23. Lodingeber	{ Cheap
	{ Broad Street
<i>Ant², p. cl.</i>	<i>Ant², p. cclxxvii.</i>

So that supposing, as Mr. Maitland says (*Hist. Lond.*, v. ii, p. 923), Farringdon Without to be the ancient "Warda Fori," and Farringdon Within, "Lodgate and Newgate"—there are still two Wards in 1339 for one in 1284, as above shewn, to be accounted for; a circumstance which controverts his suggestion at vol. i, p. 126—that the twenty-fifth Ward was created by the judicial division of the great ward of Farringdon, by ordinance of parliament in the reign of Richard II. Mr. Herbert, indeed, says that Chepe Ward is the ancient Warda Fori (*Hist. Twelve Comp.*, v. i, p. 232); which, however, in no way alters the position of the argument.

P. cxxvii, l. 15, after Hustings, add : the county court of London.—1 *Mod. Rep.*, 320.

P. cxxxiv, l. 11, after Civitatis, add : ."

*P. cxlvii, n. **, *l. penult.*, *for has, read had*.

*P. cxlix, n. **, *add* : In the borough of Plympton, also, the Mayor and Commonalty formed a body distinct from the other burgesses.—*Rot. 4 Edw. IV.*

P. cli n., l. 9, for returned by, read chosen from.

P. clxviii n., add : A charter of Edward II to the Black Friars also draws an evident distinction between the *Barons* of London, as the equals of the Mayor, and the *Commonalty* of the same, as referring to the general body of the citizens. It declares that: Whereas Gregory Rokesley our mayor of London, and *other the Barons of the said city*, at our instance, have commonly and unanimously granted to the venerable father Robert, archbishop of Canterbury, and his assigns, two lanes contiguous to his place of Castle Baynard and the Tower of Mountfichet, to be

stopped up for the enlarging the foresaid place, and to enclose them; while yet he shall assign a like way to them, as convenient *for the commonalty of the said city*. And we understanding from the foresaid *mayor and barons* of the said city, that the said Archbishop hath already prepared a better way, and more convenient for the said *commonalty*, than the said lanes were, &c. At Westminster, the 10th of June, in the 4th year of our reign (1311).—*Maitland*, v. i, p. 110. A similar distinction seems also to be drawn, in a confirmation charter of Henry I, of lands, &c., to the Abbey of Westminster. It is thus addressed: H. Rex. Angl. Episcopi, *Baronibus*, Vicecomitibus et omnibus fidelibus et ministris suis et *Burgensibus* Londoniæ, salutem (*Form. Anglic.*, LXV.) And a document referred to by Mr. Schultes, in terms of the same distinction, bears sadly against the tenor of his argument:—"In 1272, 56 Hen. III," he observes, "an obligatory writing was transmitted by the citizens to the king in parliament, sealed sigillo communis civitatis, expressing that John Adrian, mayor, *the barons*, citizens, et universalis communis civitatis, obliged themselves to fealty, on forfeiture of life and member (*Liber de Antiquis leg.* 122; 142 *Harg.* 277)."—*Inquiry into the Elective Franchise*, &c., p. 32.

P. clxix, n. * Notwithstanding all that has been urged in behalf of the Cinque Ports, there is much doubt whether the term *baron* did apply to the men of the united havens indiscriminately, as merely freemen, with any more authority than it could in like manner have been applicable to the men of London, at a period when it had certainly become titular of rank. Nor as simply representing the *burgh-ware*, as free men capable of civil rights, had it any characteristic exclusively honorable to those places, which might not equally appertain to all other enfranchised towns, entitled boroughs: still less so, if the application be taken generally, as derived from the Francic *bar*, *baro*, a man; and in the Francic Gospel, St. Peter is styled a *ba-*

ron (*Medii Ævi Kal.*, v. i, p. 330). As a first approach towards chivalric distinction, Richelet expounds—" *Ce mot a premièrement signifie un homme fort et vaillant, qui était auprès de la personne du Roi.*" In its diffused degradation, perhaps it implied as much a freebooter as a freeman. "In Italy," says Mr. Madox, "the name was given to certain vagabonds (the *Baroni di Campo di fiore*), who, being destitute of fortune or employment, lived by robbery and outrage (*Hist. Exch.*, v. i, p. 190). It seems, indeed, to have been overlooked by those, who would invest our civic ancestors with a supposed general order of nobility, that if the title *baron* had been so generally applicable to them, as merely freemen of the borough or city, it could not have been a *term of distinction*, and that if it carried with it the honorable quality represented, it could not have been of general application; for where all are alike honored, wherein consists the distinctive rank? Bohun and others, loosely quoting *Mat. Paris*, say, "the men of London, in respect of the dignity of the city, and ancient liberties of the citizens, were wont to be called *barons* (*Priv. Londini*, p. 33). But a comparison of the London charters with those of other cities, shew no peculiarity to warrant such a distinction. Nor, indeed, will the words of the author quoted warrant an inference of custom, beyond the courtesy of his own day. *Mat. Paris*, upon the occasion mentioned, says: "Rex levi occasione à civibus Londinensibus (quos propter civitatis dignitatem et civium antiquam libertatem, *Barones consuevimus appellare*) ad mille marcarum, &c." (v. ii, p. 863). The little authority there could have been for the hollow compliment, the same author seems to note in the observation of his royal master, quoted at a previous page, when, evidently referring to the distinction as a self-assumed vanity, he spoke of his "dearly beloved citizens" as "*Illi rustici Londinenses, qui se Barones appellant usque ad nauseam*" (*Ib.*, p. 501).

It may be noticed throughout the reign of Henry III

(perhaps the most disastrous to the city of London in the catalogue of kings), that the weight of his displeasure was that of his policy, and fell upon the magnates—the monied class. The civic rulers were repeatedly charged with misgovernment, for the opportunity of the mulct inflicted on them for their supposed offence; and in the year 1258, the citizens (says Paris), being accused of divers pretended crimes, *redempti et multiformiter puniti erant*; so that Ralph Hurdel (*maximus autem eorum, qui maior existet civitatis*)—*præ dolore obiit*, died of grief (*Ib.*, p. 963); a circumstance that will at once shew the class of citizens on whom the weight had fallen. In the same year, the Barons took up arms against the King, and the continued narrative of M. Paris seems to discriminate those citizens to whom the titular compliment had applied: “*In festo autem beatæ Mariæ Magdalensæ solennes nuncii ex parte universitatis Regni Angliæ Londinum destinati convocaverunt totius civitatis cives quos Barones vocant, et in aula quæ Gildehall appellatur, sciscitabantur, &c.*” (*Mat. Paris*, p. 974). This sentence, which, together with the former, has been quoted to prove the honorable quality of the citizens at large, has, in fact, a reference limited to the position which is known to have existed. The whole of the citizens at that time distinguished as Barons, are known to have been only the Majores, barons of socs, proprietors of the aldermanries, and, by the tenure thereof, civic legislators; and none other, save, with them, the council of the Mayor, were then accustomed to meet at the Guildhall. Nor is it consistent with known facts or probability, that a general assemblage of the citizens (if the inhabitants are taken to have been so termed) could have been there holden. Further, to draw the same distinction that Sir Henry Spelman observed in the charter of Henry I, as between “*barones et cives*,” *Mat. Paris* recites a letter, dated 1216, from Prince Louis, son of Philip of France, addressed—“*Baronibus et civibus Londini*.”—*Ib.*, p. 280.

It is hardly necessary to repeat, after these several citations from the same author, that they who have quoted M. Paris to prove that the whole body of citizens had the denomination of barons, took a very extended interpretation of his meaning, which seems to have referred only to the governing authorities, or, in his own words, to the "citizens who were called barons." Indeed, it would seem as ridiculous to suppose that the franktenure of a borough should confer such a title to all the inhabitants, as that all the tenants of a barony should therefore have been barons; although, in the confusion of terms, the latter has been contended to have been the case.

Mr. Cruise says—in the time of the Conqueror, and that of his sons, every tenant *in capite* who had a manor was a baron (*On Dignities*, p. 37), which is quite sufficient to shew that, thus early, the title had become one of distinction in feudal obligation and rank; and could not, therefore, have been applicable to any general body of burghers or citizens. M. St. Amand, however, extending the term to generality, as merely the Norman translation of the Saxon *Burghcar*, still says it applied "to every tenant-in-chief of the crown, by whatever tenure he held, whether by military service, grand serjeanty, or the *boroughs*:—that the immediate tenants of every lesser seignior were termed barons of the seignior, and their assembly, the Court Baron, where all the immediate tenants were bound to attend" (*Hist. Essay*, p. lxxix). One difficulty of the consequences of this theory, seems to arise in a confusion of terms and positions wholly incompatible. Thus, the proprietor of a barony was a baron, and all the tenants doing suit and service in his court were of the same title; not only were the immediate tenants of the crown barons, but also each of the sub-tenants, to the extent of the sixty-thousand knights' fees, not to mention the socage tenures and the *boroughs*, were all alike known by the same distinctive mark!

As the Saxon wites represented, in *gemotum*, their tythings, so were the barons, by law, intended to serve in parliament *for the tenants of their baronies* (*Moor's Rep.*, 763); and the object of the abovementioned Essay had been the endeavour to shew, that the boroughs were represented in parliament at an earlier date than had generally been supposed, and this by a deduction as original as the argument. All authors being agreed that the early parliaments, or convention of estates, did only consist of barons, it became necessary to bring the boroughs under that denomination; and, without going into the multitude of objections that suggest themselves against the position, it will suffice here to cite the case:—"The right of the barons," says the learned Essayist, "being built on their tenures and annexed to their land, whence their very possessions were styled a Barony, and the district of land that composed any one baron's estate being infinitely inferior, in its consequence to the public, to many boroughs (for no baron's estate can be supposed equal to the cities of London, Bristol, York, Exeter, &c.), the community of these places had the same foundation *to claim* a share in the legislature that the barons had; *and therefore it is to be presumed they had it, until the contrary can be proved.*—*Hist. Essay*, p. xcvi.

In particular reference to the cinque ports and their barons, if any such distinction could have been more generally applicable than to the tenants in chief, the tenure of those towns might claim it by a compact of no inconsiderable character. Thus, while in ordinary cases burghers, in return for their free privileges, were bound only to the common defence of their own walls, and the barons of the leet jurisdictions were of the same less honorable socage tenure, the cinque ports seem to have held their privileges in chivalry—were required to furnish a naval armament for the king's service, and were thus placed upon an equality in Grand Serjeanty with Barons of a feudal tenure, to the same extent of knights' fees,—each

being bound to a service of forty days. But the same objection must here apply as to M. St. Amand's theory, before stated. For upon feudal principles, as no possession conferred rank or distinction but that of land, so were none other recognized or represented by virtue of its arrangements. Nor does it seem, indeed (although the barons of the cinque ports are yet obsoletely extant), that the term was less transitory with the united havens, than with London and other cities which have claimed the same honorable distinction. The early charters to the former, however, seem marked by a distinction accompanying certain privileges, not elsewhere observable.

The "*Carta privilegiorum hominibus de Rya & Wyncheneselleia*," A. D. 1191 (2 Ric. I), which describes them no otherwise, declares, ... " & si quis versus illos placitare voluerit, nec respondeant neque placitent *aliter quam Barones de Hastings & de quinque Portibus* placitant, et in tempore Henrici, patris nostri, placitare solebant" (*Rymer, Fæd.*, v. i, p. i, p. 53). The same privileges conveyed the same distinction, hence, in the 26th Hen. III, when the King directed his precepts to those coast towns, "*de Rege Franciæ & suis gravandis*," those to Winchelsea, Rye, &c. were addressed to the *barons*, while one of consimilar character to Dunwich was addressed to the "*probi homines*." The very circumstance of precepts or writs so directed, conveys the idea that the terms employed referred to the governing authorities, as the mayor and jurats (or capital burgesses), and not to the general body of freemen. Crompton describes the Barons of the Cinque Ports (31 Edw. III, s. 2, c. 2; & 33 H. VIII, c. 10), as two of each of the seven towns (Hastings, Winchelsea, Rye, Romney, Hithe, Dover, and Sandwich) having places in the lower house of parliament (*jurisd.*, fo. 28); and the Mayors and Barons of the Cinque Ports are otherwise referred to as justices of the peace (*Cro., Car.* 252, 253; *Hawk., P. C.* 286, 287). Earlier, and coeval with the known discriminate application of the

term, as of rank and title, Mr. Madox quotes a record of the 4th Henry III, addressed "*Barones et homines quinque portuum*" (*Rot. Mag.*, 4 H. III; *Hist. Exch.*, v. I, p. 199); and a record of the 1st Henry VIII, *Finis soluti pro confirmatione Libertatum*, runs—*Barones et probi homines* de quinque portubus.—*Orig.*, 1 Hen. VIII, r. 139.

P. clxx, l. 2, *after* freeman, *add*: as distinguished from slave.

P. clxxiv, n. †. The anonymous Chronicle of London also mentions the occurrence as a point of etiquette:—"iv Edw. IV. In this yere was the serjeante's fest, and the maire of London shuld have dyned there; and *bicause the chief place was not kepte for him while the kyng was not there nor of hys blode*, he came away with alle hys compeigny of the cite and dyned at home in his owne place" (*Cott. MS.*, Jul. B 1). The attributed cause of this assumption of precedence is also mentioned by Bohun: "And this officer," says he, referring to the Mayor, "being thus elective, his authority ceases not on the king's death (as that of all commission officers doth), and therefore it is said, in such a case, the Lord Mayor of London is the principal officer in the kingdom (*Priv. Londini*, p. 49); and Dr. Chamberlayne observes of the state of the same officer: "This great magistrate, upon the death of the king, is said to be the prime person in England; and therefore, when King James the First was invited to come and take the crown of England, Robert Lee, then Lord Mayor of London, subscribed in the first place, before all the great officers of the Crown and all the nobility.—*Angl. Notitia*, p. 207; *ed.* 1687.

P. clxxv n., *add*: At the funeral of Henry VII, the Mayor with his mace in his hand, at the mass and offering at Westminster, offered first. The *aldermen Barons* and *representing Barons estate*, which have been mayors, offered next to the Knights of the Garter.—*Maitland*, v. I, p. 288.

The case referred to by Petyt was that of Sir Baptist

Hicks (whose lady was the chief cause of the dispute) and Sir — Herrick, who maintained for some years an expensive suit against the Court of Aldermen, commenced first by petition to the King, in 1607, and by His Majesty referred to the Commissioners for executing the office of Earl Marshall, whose report will be found in Maitland (v. I, p. 287 *et seq.*) The dispute was,—whether aldermen who were knighted should have precedence of knights bachelors of an earlier creation; and the aldermen, persisting in the suit, seem in the end to have wearied out their antagonist knights—notwithstanding the instigation of the lady, and obtained a judgment in their favour, establishing their right of precedence in *London*.

In the course of the proceedings, some reflections were thrown out upon the infraction of rule which had become customary, viz. to retire from trade after the honor of knighthood, and (which seemed a hard hit at one of the parties) the incompatibility of shopkeeping with the chivalric distinction. The stigma thus cast on the “dignity of trade”—increasing by what it fed on,—rankled and festered in the wound it had made, until it threatened to extinguish the entire race of civic gentry, had not the cause found an able friend, who, under the patronage of the king of arms, Sir William Segur, published “*The Citle’s Advocate in this case of Honour and Armes; whether Apprenticeship extinguisheth Gentry?*” containing a clear refutation of the pernicious common error of affirming it, swallowed by Erasmus of Rotterdam; Sir Thos. Smith in his *Commonweale*; Sir John Fern, in his *Blazon*; Ralph Broke, *York Herald*, and others” (*London*, 4to, 1629). A prefatory address “*To the modest Apprentices of London, Schollars and Disciples in Citle Arts, during their seven yeares Nouiceship,*” is introduced by a neatly engraven design, representing a bear about sucking an egg,—whether a modest allegory of the author treating his subject, or of the “ingenious youth” addressed, teaching their grandmothers, doth not appear.

P. clxxxv, l. 1, for grace read favour.

P. clxxxvii n., *add*: *Vide antè*, pp. cxlix n., clxviii n.

P. ccxix n. In the 23rd Hen. VI. This yere came quene Margaret into England, with great roialte of the Kynges oost, and was resceyved at London the xxvij day of May in the moost goodly wise, with *alle the citezeins* on horschack ridyng ayenst hir to the Blaketh, in *blew gownes and red hodes* (*Chron. Lond.*; *Cott. MS.*, Jul. B I.) All the entries quoted tend to show, by contemporaneous record or nearly so, that those estimated the "comœus," the "commonalty" (in the extended application of the term), or the "citizens," as they are indiscriminately called, were the members of the crafts distinguished by the livery.

P. ccxxxi n., l. 15, *add*: The following are the circumstances of the case referred to, the facts whereof are collected from the report of the *Times* journal.

At the election of Sheriffs on Midsummer day, 1840, the show of hands was declared to be in favour of Mr. Ald. Gibbs and Mr. Galloway. There was a considerable show for Mr. Ald. Magnay, while but a few hands, comparatively, were held up for Mr. Farncombe, who had been nominated for the office by the Lord Mayor, at a Court of Aldermen holden on the 2nd June. A poll was then demanded for Mr. Farncombe—as also on the part of Mr. Galloway and Ald. Gibbs.

On the 1st July, the day on which the poll closed, "a rumour," says the *Times*, has prevailed amongst the Corporation circles of the city for some days, that Mr. Farncombe, *although a liveryman of London, had omitted to take up his freedom of the city*, and therefore was not qualified to be elected Sheriff; and it was generally supposed that the Court of Aldermen was held yesterday for the purpose of *curing the defect*, by admitting that gentleman as a freeman. During the proceedings of the Court of Aldermen yesterday, a part of their business was transacted with closed doors—and it is stated that, during that interval, an order was passed for the admission of Mr.

Farncombe, who, it is said, was in the hall during the morning ready to be sworn.

On the same day Mr. W. Prichard, on the part of Mr. Galloway, served on the Sheriff a written notice, that all votes for Mr. Farncombe were of no avail, as that gentleman was ineligible, not being free of the city.

On Friday, the 3rd July, the sheriffs declared the result of the poll, as follows :

GIBBS	1,427
FARNCOMBE	1,363
GALLOWAY	695
MAGNAY	49

Previously, however, to such declaration, a protest, on the behalf of Mr. Galloway, was delivered to Messrs. Evans and Wheelton, the sheriffs, "against any return or declaration this day made, or to be made, by you or some one or more of you, to the effect, that the majority of votes polled at the election for sheriffs of London and sheriff of Middlesex for the year ensuing, on Midsummer day last, and terminating on Wednesday, the 1st day of July, were or are in favor of Michael Gibbs, esq., and Thomas Farncombe, esq.; or that they thereby were or ought to be elected to such offices; and the ground of this our protest is, that the said Mr. Thomas Farncombe *was not, at the time of his being put in nomination* for the said office, nor at the time of the show of hands being at the said election taken on such nomination, or of the said poll being demanded on his behalf, or during the continuance or at the close of the same, *a freeman of the city of London*, and, therefore, was not nor is eligible to be put in nomination for, or to be elected to, or to serve the said office of, the shrievalty; and we therefore hereby further protest against all and every the votes polled, and other the acts done, for and in behalf of the said Thomas Farncombe at the said election, from the commencement to the

end thereof, and against every act, matter and thing, following or arising therefrom...."

Upon the report and protest being made to the Court of Aldermen, the Recorder enquired if the notice alluded to as given on the 1st July, had been publicly read to the electors?

The Common Serjeant replied in the negative.

The Recorder said,—Am I to understand from the Sheriffs, that no notice was, at the time of nomination of Mr. Farncombe, given to the electors that he was not a freeman?

Sheriff Evans replied, that no notice had been given at the time: and to a further question by the Recorder it was stated, that the notice that all votes for Mr. Farncombe were unavailable, had been served on the Sheriffs at 1 o'clock on the 1st July, and that the polling had commenced at 9 o'clock.

A petition from Mr. Galloway and others, embodying the whole circumstances of the case, was then presented to the Court, and praying—"That the election of the said Thomas Farncombe, esq., to the said office of the shrievalty may be declared null and void; and that such election may be declared to have fallen on the said Michael Gibbs, esq., ald., and Alexander Galloway, esq.; and that the petitioners may be heard by their counsel, agents and witnesses, in support of their petition, and the allegations thereof."

At a Court of Aldermen held on Saturday, the 4th July, for the further consideration of the case and petition, Ald. Brown asked whether Mr. Farncombe was a freeman of the city, at the period of his nomination to the office of sheriff?

Mr. Farncombe replied, that *he was not free of the city at the period of his nomination, but that he had long been a liveryman of London, and free of the Tallow Chandlers' Company, to which he belonged. When he was nominated on the 24th June, as the show of hands at the Com-*

mon Hall was against him, he thought he was not to be sheriff; but some gentlemen having thought proper to demand a poll, he conjectured that *at the close of the election, if the event proved to be favorable to him, it would be time enough to qualify* He had accordingly, as soon after he was elected as was practicable, done all that he considered necessary. He was now a liveryman and a freeman, and he stood before the Court at that moment, to demand to have the return made by the sheriff confirmed, on behalf of the 1,363 electors who had voted for him, and on his own behalf.

Upon the admission of facts stated by Mr. Farncombe, several aldermen observed, the Court was in a condition to proceed to a decision on the case. The minute of the order of *Tuesday, the 30th of June*—that Mr. Farncombe be admitted a freeman of the city by redemption, upon payment of 2*l.* 6*s.* 8*d.*—was then read; formal evidence was also produced from the chamberlain's office, to prove that Mr. Farncombe was not free at the time of the nomination, or during the election.

The Recorder said, that the petition presented by Mr. Galloway and others was not only against the return of Mr. Farncombe, but prayed that Mr. Galloway should be admitted to the office in the room of that gentleman. He thought proper to call the attention of the petitioners to the fact, that there was no allegation in the petition to the effect, that the electors had had any notice of the ineligibility of Mr. Farncombe. Such notice ought certainly to have been given.

The Court then proceeded to take the subject into consideration, and ultimately the Recorder stated the result of their deliberations as follows:

That Mr. Alderman Gibbs was duly elected.

That the election of Mr. Farncombe was void.

That Mr. Galloway was not duly elected.

That the Lord Mayor be requested to issue a precept

to the Livery to meet, and elect a fit and proper person to fill the office of Sheriff.

At a Common Hall on the 9th of July, holden by virtue of such precept, Mr. Farncombe was again nominated to a considerable body of the livery there assembled (under protest from Mr. Galloway of the illegality of the whole proceeding), and elected sheriff without opposition.

"Blame," says the *Times* of July 1, "has been in some quarters thrown on the Lord Mayor, for putting an ineligible person in nomination. His lordship, however, shifts the censure from his own shoulders, to those of the gentleman who recommended Mr. Farncombe should be put in nomination, and who, his lordship supposed, would not have recommended the experiment, without being convinced that there could exist no objection upon the score of qualification." The greatest blame appears to attach to the candidate himself, who, as early as the 2nd June, acquainted with the honor intended him, can hardly be imagined so uninformed of the connexion between words and things, as to have been unaware of his own inability, when he heard himself nominated by the style of "Citizen and Tallow-chandler." Indeed, in his reply to the question of the Court of Aldermen, he is reported to have admitted his disqualification as known to himself from the commencement. The date put in evidence will also shew, that he had endeavoured to patch up the defect on the 30th June.

"It is said," observes the *Times* of July 2, "that Mr. Farncombe *had his reasons* for not becoming a freeman: *the fact is*, that if, by any chance, Mr. Galloway's and his names had been above the other names on the poll, Mr. Farncombe could, if he disliked the association, *at once get rid of the obligation to serve without paying the fine*, by pleading that he was not free." A chicanery motive so unworthy of any gentleman claiming the distinguished honor in contention, can hardly be supposed to have had any other authority than the shallow advocate making

the declaration ; yet, it must be confessed, the possibility is not inconsistent with the "time enough" declaration of the candidate himself. The decision of the Court of Aldermen, however, founded upon the just principle of primeval qualification, will shew, that gentlemen may not enjoy such convenient option of citizenship, until secure of the honors.

P. cccxxii n., l. 19, for 1480-1, read 1380-1.

P. cclvii, n. 1, l. 6 : Correct the statement given in the terms of the histories—that "most, if not all of them were turned out," &c.,—which does not seem to convey the fact of a general vacation of the office, as a part of Brembre's scheme to monopolize the Wards by his influence in a general election (*vide p. cccvii.*) The "turn out" was accomplished by the result of a petition to the king, got up in terms which hardly seem to disguise its operating effect, praying :

That where the aldermen of London are chosen yearly, and returned at the feast of St. Gregory the Pope, they require that free choice may be made of the most able men, *as well of such as were the year before, as of others,* and that yearly.

Reponse.—The king granteth thereunto, as long as thereby is good government in the city.—*Cott. Rec.*, 301.

P. cclix n., add : The occurrence referred to is related in the following newspaper article :—

"Robes and furred Gowns." Although it be true that charity hides a multitude of sins, charity is nevertheless held to be no substitute for a cloak—at least in the presence of the Court of Aldermen. "Alms to the poor" are all very well, says the Lord Mayor, "but the costume of the Court" must be first attended to. The following dialogue took place on Plough Monday, when the gentlemen of the Inquest of Tower Ward appeared at the bar *without cloaks*.

The Lord Mayor.—Gentlemen, I regret to see you come to this Court without your proper costume.

Foreman of the Inquest.—Does your Lordship refuse to receive us?

The Lord Mayor.—I have to express my regret, Sir, that you neglect the necessary forms.

Foreman.—We consider, my lord, that the money that livery gowns would cost, is much better laid out in benefiting the poor of the Ward.

Sir Peter Laurie.—So I thought when I was lord mayor, and I therefore was always glad to hear such an excellent excuse. I advise the lord mayor to receive the Inquest.

The Lord Mayor.—We never refuse; but those who come without gowns are received last, that is all.

Ald. Gibbs.—In my Ward, the Inquest pay out of their own pockets for the gowns.

Foreman of the Inquest.—And we give out of our own pockets to the poor. *Examiner, Jan. 24, 1841.*

P. cclxxxiv, add: The following additional extracts from the opinions of the learned judges in the case of Ald. Plumbe, and the points upon which turned their judgment, will shew how foreign from the strained imputation was the bearing of the whole case. It was no “disputed point with the Government,” whether the Companies of Liverymen did possess or should exercise “the rights of citizens”—nor was such a question at issue: but, on the contrary, the judgment in error was founded upon the insufficiency of the matter of the summons, as a circumstance compulsory upon any particular body of incorporated citizens.

Mr. Justice Ashurst observed:—“The remonstrance, address and petition, did not contain any matter that concerned the city of London in *its corporate capacity*; that it certainly was the declared inherent right of the subject to petition the king, but it was their business to see that the matter of such petition was proper and respectful; but though the subject has this right, it is a matter of discretion and choice, and not obligation, and

no man has a right to tell another he ought to concur in a petition or not ; *it has nothing to do with the corporate duties* of this or any other city ; a corporation, as such, may do it if they please, *but it is not a matter of corporate obligation ; the refusing to execute that precept which merely concerned that purpose which was not a corporate one, could not be a corporate offence*, and therefore, in his opinion, could not be a ground of conviction. And further, that if the address was ever so proper, but had *nothing to do with the corporate relation of the livery*, he was not in duty bound to obey the precept."

Mr. Justice Aston was of the same opinion.

The lord Chief Baron Smythe said :—" If the Mayor had a power at all of summoning the livery for any purpose but that of choosing magistrates, *it must be for some corporate purpose, &c.*

The lord Chief Justice De Grey, after stating the rules by which the powers of corporate bodies are to be examined, added—" but the question is, what is to be done, when it appears the subject of their meeting is not the particular business of that body, nor even the particular business of that city, but relates to supposed national grievances, which is the concern of the citizens as subjects and liverymen as it concerns every body, to present a petition to the Sovereign, *but it has nothing to do with the corporate capacity of the city, and nothing to do with the corporate character of the livery*, but it might be a matter equally relative to the subject at large ; consequently, it is clear as the sun they could not do it *corporaliter*."—*Treat. of Municip. Rights*, p. 108 *et seq.*

P. ccxvi. In reference to the record of the 25th Edw. III, summoning certain members of the crafts to council—there is little doubt that the same principle had long prevailed, and probably from the establishment of the communia, or special trading freedom of the incorporated city. Whence it will result that, although the subdivisive classification of the Wards continued in opera-

tion, and the special freemen of each might consequently be denominated Wardsmen, it was the special trading qualification, and not the burgage right within the leet, that gave them recognition under the civic incorporation; and this will appear by the petition to the mayor and aldermen, in the 6th Edward the Second.

On Friday before the feast of St. Nicholas, in the 6th Edward II, were gathered at Gyhalde, John de Gisors, mayor, and many aldermen and *honest men of the city of every Trade, who came to treat upon certain articles and businesses for the whole commonalty, &c.*

The record then proceeds:—Also, because in times past *whereof no memory is*, as also in modern times, the city is wont to be defended and governed by the wealth and counsel, *as well of honest men of mercantile trades, as of other trades wrought by hand*; and it hath anciently been used that *no extraneous person, be he homebred or foreigner*, of whose conversation and state a certain knowledge might not be had, should be admitted into the liberty of the city, *unless first such merchants and tradesmen of the city exercising the trade which such to be admitted intended to use, be lawfully called, that by the citizens themselves so called together*, the Mayor and Aldermen being certified of the condition and fidelity of such person to be admitted, might know, if they were to be admitted or refused. The whole commonalty petitioneth that the foresaid form, whereby the greater Trades of merchants or Handicraft men were ordered, be for the future observed, lest any for time to come be admitted to the liberty of the city, contrary to the foresaid provision (*Lib. Horne, fo. 427*). The regulations required were afterwards confirmed by charter, *Vide p. cclx.*

P. cccxv n., and in several other instances, Mr. Newell's pamphlet will be found quoted as "*Facts and Arguments*;" whereas the title is "*Evidence and Arguments*," &c.

P. cccxxxvi n., l. 9. The following are cited by Mr.

Madox : " Alwin the Mercer amerced *pro communia*, for setting up a community in the burgh of Gloucester (*Mag. Rot.*, 16 *Hen.* II) ; and Henry Hund and the rest of the men of that town for the same.—*Ib.*

P. 39 n., l. 13, for Edward the Third, read Edward the Fourth.

P. 48 n., for No. IX, read No. XI.

P. 50 n., l. 12 & 13, read : who had long acquired the distinction of *probi homines* of the Wards.

P. 59, l. 8, for to, read so.

P. 83, l. 20, for obscurity, read obscurity.

P. 84 n., l. 3, for either by right, read either by a supposed right.

P. 111 n. Referring to the Act 5 & 6 Will. & Mary, Bohun remarks that " King Charles II, to support the extravagance of his court, &c. being necessitated to use indecent shifts to procure money, did, about the years 1665, 1666, &c., apply for that purpose to the city of London ; and by the treachery or folly of some aldermen, &c., obtained a loan on his privy seal, or tallies of loan, of such moneys belonging to the said Orphans, as were then in the chamber of the said city, with which for awhile he supported his extravagance, and paid the interest due thereon till about the year 1671—when, finding himself unable to pay the principal, and scarcely the interest, and the parliament refusing to supply him with money, he, by the advice of the then lord Clifford (who for that service was made lord treasurer of England), closed the Exchequer, and thereby became not only bankrupt himself, but occasioned the chamber of the said city to be so also ; whereby many thousand of the city Orphans (*heu Pietas Regum!*) were reduced to misery and want, and were not only for ever defrauded of their principal moneys, but even of interest for the same, till the said Act of 5 & 6 Will. & Mary, which is called an Act for their relief, though it utterly deprives them of their principal, and only allows them 4 per cent. interest,—besides the injury done

to the city, by divesting it of its ancient jurisdiction.—*Priv. Londini*, p. 336.

P. 140 n., l. 1, *for a fit person, read fit persons.*

P. 143 n., l. 9, *for quite, read quiet.*

P. 145 n., l. *penult.*, & p. 155 n., l. 2, *for decrepitude, read decreptitude.*

P. 149, n. *, l. 2, *for rtapel, read rtapel.*

P. 157 n. Dr. Fosbroke traces the Mace, as an emblem of municipal power, to the sceptre of Agamemnon, which, he observes, was preserved by the Chæroneans, and seems to have been used among them after the manner of a mace in corporate towns; for Pausanias relates, that it was not kept in any temple appropriated for its reception, but that it was annually brought forth with proper ceremonies, and honored by daily sacrifices; and a sort of Mayor's feast seems to have been provided upon the occasion—a table covered with all sorts of vegetables was set forth.—*Encycl. Antiq.*

P. 168 n., l. 5, and in several other instances, *for frankpledger, read frankpledge.*

P. 190, l. 9, *for subsisting, read subsisting.*

P. 215 n., l. 5, *for goldsmith, read freeman of London:* the parenthesis, in so far, founded on insufficient authority, and conveying an incorrect statement, but not otherwise material in its operating consequences. His Royal Highness, with a delicacy which forbade the inrollment in one to the prejudice of the others, declined the honor of the Crafts; accepting the city freedom by redemption, according to the provision of the charter of Edward II, "in the Hustings"—as one "not of some certain mystery or trade."—§ 7; *vide* p. cclx n.

P. 220, l. 1, *for somtimes, read sometimes.*

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